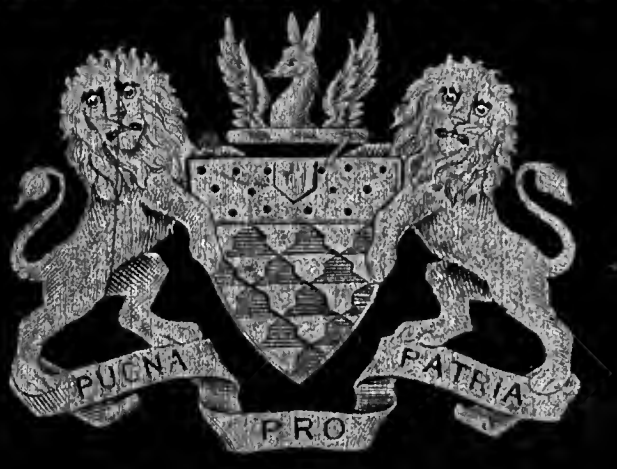
THE TRIAL AT BAR



OF

SIR ROGER C. D. TICHBORNE,
BART.

VOLUME VII.

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Orton, Arthur, calling himself Sir Roger Charles Doughty Tichborne, bart., 1834-1898, defendant
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ONE HUNDRED AND TWENTY-NINTH DAY.—THURSDAY, NOVEMBER 27TH, 1873.

Mr. HENRY FRANCIS PURCELL, recalled.

Further examined by Mr. HAWKINS.

I believe that you on the 21st October last left England for New York?—Yes.

With a view of making inquiries with regard to the evidence given in Court by JEAN LUIE?—Yes.

On what day did you arrive in New York?—On the evening of November 2nd.

Now tell me first of all the general nature of the inquiries you made?—Well, I proceeded to test seriatim every single statement made by LUIE.

Dr. KENEALY: I do not know that this gentleman is to tell us that he proceeded to test every statement.

The LORD CHIEF JUSTICE: That is only introductory. Do not take objection before there is occasion for it.

Dr. KENEALY: I want him to confine himself to what he did, not what he proceeded to do.

The LORD CHIEF JUSTICE: Of course; it is only introductory.

Mr. HAWKINS: Were you furnished with a printed copy of LUIE'S evidence?—I was.

And were your instructions to make inquiry into those portions of it which related to New York and America, as far as you could?—They were.

Now first of all let me ask you with reference to Staten Island?—I went on the 4th November to Staten Island, and arrived at Tomkinsville Landing.

Is there a pier at what is called Tomkinsville Landing?—Yes; in fact, there are two—a Government Pier close by, where the United States Lighthouse Department is, and which had been formerly a Custom-House Station.

There are two piers, as I understand?—Two piers.

One pier where people land—a public landing for the ferry boats?—Yes.

The LORD CHIEF JUSTICE: We have not got that; he has only mentioned the Government Pier. The first is that of the United States Government. Now what is the purpose of that pier?—I do not know what the purpose of it is.

Is it available for the public?—I think not: it is called the Government Pier, and is apparently not available for the public, because the other, the Tomkinsville Landing Pier, where the public land, is close by.

Mr. Justice LUSH: I thought you said one had formerly been a Custom-House Station.

Dr. KENEALY: That must be hearsay, and we had better not have them on your lordship's notes.

Mr. Justice LUSH: Very well, if you object to it. The other is a public pier?—The other is a public pier.

The LORD CHIEF JUSTICE: For what purpose?—Landing ferry boats; there is a ferry boat runs across from New York to Staten Island, and this is the pier where the people land.

A steam ferry boat?—A steam boat.

Mr. HAWKINS: You said at the public pier there had been formerly the Custom House. I must not ask you what you do not know of your own knowledge, but what is there now?—The Offices of the Lighthouse Department of the United States.

The LORD CHIEF JUSTICE: Connected with the other pier, the Government Pier?—Yes.

Mr. HAWKINS: Have you with you a map or plan that will show this locality?—Yes.

Will you point out exactly the position of those. (The map was produced.)

Dr. KENEALY: This looks like a picture.

Mr. Justice LUSH: It is a bird's-eye view, I suppose?—It is a bird's-eye view.

Is it a faithful bird's-eye view?—It is.

Mr. Justice MELLOR: Which is Staten Island?—All along here. (Pointing.) This is New York; here is Castle Gardens, where the emigrants live; this is the North River, and this is the East River; and here are the Narrows, by which every ship coming in from the ocean comes into New York; and there is the Quarantine Station and Tomkinsville Landing; the Quarantine Station is at Tomkinsville Landing, and so is this Lighthouse of which I have spoken.

Mr. HAWKINS: I do not know whether you have marked on that plan the different localities?—It is unmarked; there is one mark, where Newark is, that is the only thing I have marked.

Have you seen yourself the map on which LUIE marked the spot at which the 'Osprey' was loaded?—Yes.

Will you be good enough, on that picture, to mark the spot?—It is the particular spot I have indicated; it is at Tomkinsville Landing, a couple of hundred yards from it, just there, is the spot he has indicated.

The LORD CHIEF JUSTICE: Near the pier?—Yes, I think he said 200 yards from the shore, and 100 yards south of the pier.

Mr. HAWKINS: And how far from the Narrows is that?—That would be I suppose a couple of hundred yards from the inner entrance to the Narrows.

Within the Narrows?—No, outside the Narrows, a couple of miles from the outside and a mile from the inside.

Now tell me the size of Staten Island?—Very large, because I took myself only a bird's-eye view of it; it is fifteen or sixteen miles long.

Is there any Custom House at Staten Island?—None.

Within what Custom House district is it?—The collection district of New York.

Dr. KENEALY: That must be hearsay. I cannot have that on your lordship's note.

The LORD CHIEF JUSTICE: How do you know that?—Because it is provided by Statute Law; the Custom Houses are all Federal.

Dr. KENEALY: He cannot speak to the Statute Law of America.

The LORD CHIEF JUSTICE: Have you the statute?—The statutes are in the Court or references to them.

Mr. HAWKINS: I am going to call a gentleman of the American Bar.

Dr KENEALY: Very well. Then you ought not to seek to get it in by this Witness.

Mr HAWKINS: Have you made yourself acquainted with the law upon this subject?—Yes, I have.

Will you be good enough to tell me—you were going on to say that Staten Island, as I understood, was within the district?—Yes, it is within the collection district of New York.

Dr. KENEALY: I do not know how old this law is, my lord; we are now talking of 1854, and for anything that appears that may have been passed since.

The LORD CHIEF JUSTICE: That you may get on cross-examination. He can only tell us what the law is.

Dr. KENEALY: But it is a pity that things should be heard and cut down.

The LORD CHIEF JUSTICE: That is the effect of cross-examination.

Mr. HAWKINS: There is a Custom House at New York, of course?—Yes

Now there is no city called New Jersey City?—No, it is the name of a State.

The Jersey City is a city in that State?—Yes, Jersey City is the other side of the Hudson from New York.

The LORD CHIEF JUSTICE: I thought you said there was no Jersey City?—No city called New Jersey. There is Jersey City.

And Jersey City is where?—The other side of the Hudson from New York; it is substantially part of New York.

Mr. HAWKINS: Is there any Custom House in Jersey City?—There is not.

What Custom Houses are there this side of New Jersey?—In the State of New York there are two within a moderate distance of New York; at least, within a distance of twenty miles. One is at Newark, and the other at Perthamboy. Perhaps there may be others in the State; but I am now speaking of the bay of New York.

The LORD CHIEF JUSTICE: How far are Newark and Perthamboy from Staten Island?—Perthamboy is up there and Newark is there (pointing).

How far would that be?—I could not tell you the mileage, but I think Perthamboy would be something like 15 miles, and Newark perhaps 10 or 12.

Mr. Justice LUSH: They are not on the Hudson?—Perthamboy certainly not, but as to Newark there would be water running up this arm of the Hudson. This is the Hudson, although it is sea water, and it runs up that arm. It would not be called on the Hudson River although the water runs up there.

Perthamboy is on the sea?—On the sea, the other side of the island.

Mr. HAWKINS: And what would be the distance from the spot where LUIE stated the 'Osprey' was to the Custom House at Newark?—About five or six miles.

I think I understood you to say that was within the New York district?—Yes.

How was the Custom House for New Jersey State regulated? Is that by Federal law?—By Federal law; all the Custom Houses are regulated by Federal law.

The LORD CHIEF JUSTICE: The whole system of the Customs is under Federal law?—Yes: in fact the great office every one contends for is President of Customs, as giving a chance for the Presidency of the United States.

Mr. HAWKINS: Did you pay a visit to the Custom House at Newark for the purpose of making inquiry?—Yes, on the 5th of November I went to the Custom House in Newark.

Did you obtain personal inspection of the records which are kept there?—I did.

The public records which are kept in the Custom House?—Yes.

Was that personal inspection afforded you by General ARTHUR, the head of the Department?—Yes, General ARTHUR is Collector of Customs and directed that everything should be laid before me, and sent some of his clerks to attend on me.

Did you obtain the records of all the arrivals and clearances during the years 1853 and 1854?—I did.

Dr. KENEALY: I object to the contents of this book.

The LORD CHIEF JUSTICE: Why?

Dr. KENEALY: I want the book itself.

The LORD CHIEF JUSTICE: The book is abroad, out of our jurisdiction.

Dr. KENEALY: I do not know but if that book had been applied for it might have been lent; I cannot tell.

The LORD CHIEF JUSTICE: It is not for us that it is not here. It is not within the compulsory process of this Court.

Dr. KENEALY: I say that that book might have been lent; there is nothing to show that it might not at the present moment have been before the Court without compulsory process.

The LORD CHIEF JUSTICE: Is it not the rule that where a document is not within reach of the process of the Court, secondary evidence of its contents may be given?

Dr. KENEALY: I apprehend not, if a document of that description may be tendered or may be lent to the Court: of course, if the Court has no power to inspect a document of a foreign country, for public convenience the contents of that document may be admissible; but, first of all, it must be proved that the Court has no power to get it if applied for.

The LORD CHIEF JUSTICE: If it is proved to be out of the jurisdiction of the Court, I apprehend that is quite enough. We cannot ask a foreign Government to send its documents here.

Dr. KENEALY: I want to know: why may not, by the Comity of Nations, a foreign Government lend another a book?

The LORD CHIEF JUSTICE: I do not think you will find authorities laying down the admissibility of secondary evidence is subject to any such condition as that which you suggest, namely, that application should be made to those in whose custody it is, "Be so good as to send to us such and such a book."

Mr. Justice LUSH: But I go higher than that. If kept at our own Custom House, a copy would be receivable.

Dr. KENEALY: I apprehend that is by the statute?

Mr. Justice LUSH: No, by Common Law.

Mr. Justice MELLOR: It is where a book is required by a great number of people at one time, like a public book.

Mr. Justice LUSH: Look at the Transfer books of the Bank of England which are not to be removed; secondary evidence is receivable by Common Law.

Mr. HAWKINS: Did you ask to have the books lent you for the purpose of production here?—Yes, I went to Mr. RICHARDSON, the Treasurer of the United States, and asked that all those documents which I examined, or wished to examine, might be lent, and I mentioned that it was in the interests of Justice and in this Case being tried at the Queen's Bench, but he declined on the ground of the public service of the United States. At the same time he offered me every facility to examine which I chose.

Now, I am about to ask you as to some searches you made. Did you make searches at the Custom House personally, yourself?—I did.

First, with reference to arrivals at New York?—I searched the record of arrivals in the port of New York from the 1st of July, 1853, to the 1st of May, 1854.

During that time was there any arrival of a vessel called the 'Osprey' at New York?—No vessel called the 'Osprey' arrived in that period.

Dr. KENEALY: I shall be glad to know what part of LUIE's evidence this contradicts, because I am not aware that he said the 'Osprey' ever arrived at New York.

The LORD CHIEF JUSTICE: No, but at Staten Island; and the Custom House being at Newark, the entry of arrivals would be entered in the Custom House book at Newark, and the absence of it so far is negative proof.

Dr. KENEALY: There was a chart that LUIE marked showing the place it did arrive at.

The LORD CHIEF JUSTICE: He said Staten Island.

Dr. KENEALY: With all submission, I think not. There is no pretence, in the first instance, that LUIE ever said he arrived at New York in the 'Osprey,' or that she came within the jurisdiction of New York.

The LORD CHIEF JUSTICE: He said that she loaded at Staten Island.

Dr. KENEALY: Your lordship knows she loaded by lighters.

The LORD CHIEF JUSTICE: She loaded at Staten Island.

Dr. KENEALY: Very well, my lord.

The LORD CHIEF JUSTICE: That is what I understood him to say.

Dr. KENEALY: That is not what I understood him to say, my lord; and I think, if you will look at the chart, I am correct.

Mr. Justice LUSH: This is what I have, "I joined the 'Osprey' at New Orleans as Steward. We sailed from Staten Island in the latter part of 1854."

The LORD CHIEF JUSTICE: They could not have sailed from Staten Island without getting there.

Dr. KENEALY: That I am not sure of. A man may say he sailed from London, and yet never have come above Gravesend.

The LORD CHIEF JUSTICE: The port of London it would be, and would be liable to the Custom House authorities of London.

Dr. KENEALY: That is the point I am upon, because the contention here is, which will be very soon verified when that chart is produced, that he never came within the jurisdiction of New York.

The LORD CHIEF JUSTICE: If that turns out to be so, the evidence comes to nothing; but my impression is certainly the other way.

Dr. KENEALY: That would be shown if we had the chart, and the actual place marked on it.

Mr. HAWKINS: Allow me to call your lordship's attention to p. 182 (Vol. VI.). This is the question by me to the Witness: "Because I took it from you in the plural, you used the plural term cargoes. You mean a cargo of dried meat?—Yes, but we went to Beunos Ayres as well; but that was in 1853. Mr. HAWKINS: Can you tell me when you arrived at New York?—We arrived at New York shortly after Christmas time—January, 1854."

Dr. KENEALY: Here is a foreigner who adopts Mr. HAWKINS's phrase, "when did you arrive at New York;" and says, "We arrived," so and so.

The LORD CHIEF JUSTICE: He is not a foreigner out there, because he is domiciled.

Dr. KENEALY: He marked on the chart the exact place where he arrived, and I say that is outside Staten Island. The whole of this evidence I object to as irrelevant and inadmissible, because it is not contradicting him. Let the chart be produced. Your lordship knows how anxious I was at the time that the chart should be marked.

The LORD CHIEF JUSTICE: We will have it there in *prima facie* evidence when a man is asked when he arrived at New York, and he says in January; that is *prima facie* evidence that he did.

Dr. KENEALY: Very well, my lord. You cannot show us where he did arrive.

Mr. HAWKINS: There was a chart of mine handed to your lordship. I am not at all sure this is the one, but I think your lordship put your initials to it.

The LORD CHIEF JUSTICE: However, there is quite enough to go on with. This is the one, is it?

Mr. HAWKINS: I am not sure.

Dr. KENEALY: We want the chart itself.

Mr. HAWKINS: I remember what occurred; it was the only chart I had—my own private one.

The LORD CHIEF JUSTICE: This is LUIE's own mark.

Mr. HAWKINS: Quite so. If you remember at the time, I said "It is my own private chart, I do not want it marked."

The LORD CHIEF JUSTICE: That accounts for our not having it?

Mr. HAWKINS: It was returned to me.

Mr. Justice LUSH: Here is the passage I referred to in 'TAYLOR on Evidence,' the 409th section, that you may give secondary evidence of all public books.

Dr. KENEALY: The Case I was referring to was CRISPIN v. POLLIONE, which they have answered by anticipation. Your lordship remembers that Case in the 2nd Law Journal.

Mr. HAWKINS: Did you examine also the clearance books for vessels leaving New York?—Yes; I examined the clearance books for the same period.

During that period was there any vessel named the 'Osprey' which left the port of New York?—There was not.

Did you also visit the Custom House at Newark?—I did.

And at Perthamboy?—I did.

Dr. KENEALY: I have asked to see that chart, and I have been refused, my lord.

Mr. HAWKINS: It is nothing of the sort. I do not understand why this statement is made.

Dr. KENEALY: I have this moment sent a message to Mr. STEPHENSON to let me see it, and he sends me back word that it is Mr. HAWKINS'S own property.

Mr. STEPHENSON: That is the answer; I did not refuse.

Mr. HAWKINS: If Mr. STEPHENSON had asked me, I should have said, "With the greatest pleasure," of course. (It was handed to Dr. KENEALY).

Mr. Justice MELLOR: The question last put is ambiguous. "Was that during the same period"? that is, "examined during the same period."

Mr. HAWKINS: Exactly.—I examined the files of ship's papers both at Newark and Perthamboy for the first four months of 1854.

Did you find any trace of any 'Osprey' either arriving or leaving?—No 'Osprey' either arrived or cleared at either of those places.

In New York did you see and receive a book from a person called PAUL CORNELL?—I did not receive it from the hands of CORNELL, but I received it from Staten Island, and it is in CORNELL'S possession now.

The LORD CHIEF JUSTICE: Is CORNELL here?—He is, my lord.

Mr. HAWKINS: From whom did you receive the book?—I received it from the hands of a messenger who came up specially from Staten Island, but it is in possession of CORNELL.

Who speaks to the book?—Who speaks to the book?

I only want to identify it. Will you be good enough to give it a name?—It is the barge book of the Custom-House Station which existed at Staten Island—a Boarding Officer's Station which existed there at one time. When the ship came through the Narrows, it was boarded.

Is that a book which CORNELL saw before you left America to return?—Yes, CORNELL identified it.

And it was entrusted to you, and you have handed it to him?—I handed it to Mr. STEPHENSON, who no doubt has handed it to him.

Is it in the same state as when you received it?—The same state as when I received it.

Is that the book (producing it)?—That is the book.

Besides searching at the Custom House, did you make any search at all? Is there a pilot for instance?—Well, there is the Office of the Pilot Commissioners for the Port of New York.

Are you enabled to state from your own knowledge of the law, whether there is any law requiring a pilot to be taken on board the vessels?—Not from my own knowledge of the law, only from police statement there.

Dr. KENEALY: You ought not to add that, and I am surprised at a Barrister saying it?—I did not say what the law was.

The LORD CHIEF JUSTICE: What is the objection?

Dr. KENEALY: He is telling something from a public statement there.

The LORD CHIEF JUSTICE: You did not catch the answer. He says, "My knowledge is derived in such a way." He does not say what he knows, but he says his knowledge is derived, not from any knowledge of the law, but a statement.

Dr. KENEALY: I understood that he was asked his knowledge of a particular fact, and whether he knew it from his own knowledge of the law.

The LORD CHIEF JUSTICE: No, you are mistaken.

Mr. HAWKINS: You searched at the Office of the Pilot Commissioners?—Yes, I did.

Were there records of the vessels kept which were piloted to New York?—Yes, New York pilots.

Did you ask for permission to bring that book to England?—Yes.

Was permission to do so refused on the same ground?—It was refused at first, but ultimately granted.

And have you produced the book, and is it now here?—Yes.

Is that the book (it was handed)?—This is the book.

Was that for the years 1853 and 1854?—It includes the whole of 1854, it appears to commence September, 1853.

That is for New York pilots?—For New York pilots.

The book is before you, and you have searched it?—I have searched it.

Is there any record of any 'Osprey' piloted outwards from New York during the whole of 1854?

Dr. KENEALY: I object to the contents of this book, because it is not a public document.

The LORD CHIEF JUSTICE: I understand that it is. I understand that it is a book kept in the course of duty at the Pilot Office as a record of all ships piloted into and out of the port of New York by New York pilots.

Dr. KENEALY: The only person who I apprehend can give evidence of the contents of this book is the person who made the entries during that time. I will illustrate it in this way. If a book from a police-office were produced in a Court in London, Mr. PURCELL surely would not be allowed to swear to that? The person from the police-office who made and kept the book would have to be called to prove its contents; and I apprehend, with all submission, that the only person who can prove the contents of this book is he who made or kept the book, and can tell us whether it is accurate or not.

The LORD CHIEF JUSTICE: We must take it these are entries made in a book kept in the course of official duty by persons whose duty it is to make those entries, and those persons are out of our jurisdiction. The book has been lent, and is produced. It is a book kept in the course of official duty, and the Witnesses are not here. I think it is admissible.

Mr. Justice LUSH: If the proposal were to read the entry from the book, I should consider it matter (as far as I am concerned, at all events) for argument, but it is to prove a negative. There is nothing in the book. That may be shown by anybody. Its value depends upon other considerations.

Mr. HAWKINS: If I call the particular persons who made the entries, should I go further?

Mr. Justice LUSH: It is not like establishing something in the book, but is only in order to show something is not entered in the book.

Dr. KENEALY: There is another objection; it should be first proved that a ship stationed at this particular place where LUIE marked required a pilot.

Mr. Justice LUSH: That is not proved, no doubt. It goes to the value of it.

Dr. KENEALY: Does it not go to the admissibility?—because it is irrelevant without that proof.

Mr. Justice LUSH: We cannot tell whether it is irrelevant at present.

Dr. KENEALY: Very well, my lord; I only call your lordship's attention to it.

The LORD CHIEF JUSTICE: Then we will take it that there is no entry?—Of such a vessel being piloted outwards. This is the outward pilotage book. I did not obtain any inward book.

Mr. HAWKINS: Have you searched the outward book?—I only searched the outward book, which I obtained. I had so much difficulty in obtaining one that I did not ask for the other.

Mr. HAWKINS: You had a very great deal to do, and barely time to do what you did?—Barely time. It was hardly possible to do it.

There are also, I believe, New Jersey pilots?—There are.

Did you make search at the office where records of the New Jersey pilots would be?—I made search. It was in the hands of the Secretary; but I was not able to find him at his office, and had to induce him to come and meet me on the steamboat on the morning of going away, and search them on the way.

Did he bring you the records?—He brought me the records.

The LORD CHIEF JUSTICE: Of what?—Of the New Jersey Pilot Commissioners.

Mr. HAWKINS: Was there any trace of a vessel piloted by New Jersey pilots?—No.

Mr. Justice LUSH: Outward?—Yes, both outward and inward in the case of New Jersey.

Mr. HAWKINS: Those records you asked permission to bring, I think?—I did.

The Secretary declined unless a Board meeting authorised it?—Yes.

And there was not time to get a Board meeting, therefore you were obliged to leave that behind?—They have reached me since by post. I marked them at the time to identify them if it should so happen that the Board consented.

The LORD CHIEF JUSTICE: You have received them since?—Yes.

Mr. HAWKINS: Did you make enquiry for the Stevedore, THOMPSON, who was mentioned by LUIE?—I did.

Were you able to find THOMPSON himself?—No, I was not; he was dead.

Did you procure a book?—I did.

Which purported to have been kept during the period of 1854?—I did.

The LORD CHIEF JUSTICE: Do you mean a book kept by THOMPSON?—I do not know whether it is in THOMPSON'S handwriting; that will be spoken to, but it is in the ledger of THOMPSON'S business, kept by his bookkeeper.

Mr. HAWKINS: Is that the book you were entrusted with? (It was handed).—Yes.

Was that handed over to Mr. STEPHENSON in the state and condition it was entrusted to you in?—It was.

What do you call that book?—A Stevedore's ledger or day-book.

Did you visit New Bedford?—I did.

The LORD CHIEF JUSTICE: You do not propose to go into that book?

Mr. HAWKINS: I have a Witness coming with regard to that; it is only to identify the book. If you like, my lord, Mr. PURCELL has examined that book, and will speak to it.

Dr. KENEALY: This book is kept by a private individual, and is altogether on a different ground from public books.

Mr. HAWKINS: I do not want it, my lord, at present. I am going to call the Witness. I withdraw the question.

The LORD CHIEF JUSTICE: You visited New Bedford?—Yes.

Mr. HAWKINS: Did you examine thereupon records of arrival and clearance in 1850, 1851, 1852, and 1853?—I did for a portion of 1853. I never went beyond the first three or four months of that year.

That is New Bedford Custom House?—Yes.

Did you search for vessels bearing the names of 'Osprey' and 'Helvetia'?—I did.

Did you find any record or any entry of any vessels bearing those names having cleared during the period you have mentioned?—No vessel bearing that name arrived or cleared during that period.

The LORD CHIEF JUSTICE: You did not search for 1854?—Only the first few months of 1854.

You said 1853?—No, I did not search 1854 for New Bedford.

Mr. HAWKINS: Did you search also at the port of New Bedford during the years 1851 and 1852?—Yes.

Mr. Justice LUSH: Where—at the Custom House?—At the Custom House.

Mr. Justice LUSH: That is what he has spoken of.

Dr. KENEALY: It is for another purpose.

Mr. Justice LUSH: The same place?

Mr. HAWKINS: The same place.

The LORD CHIEF JUSTICE: Did LUIE fix those periods?

Mr. HAWKINS: It is with reference to the 'Helvetia.' I am going to call the Captain of the New Bedford 'Osprey.'

Did you search during the years 1850, 1851, and 1852 at the Customs the register of the vessels?—I did the record of registers granted.

Mr. Justice MELLOR: Did that include the three or four months of 1853?—No, 1850, 1851, and 1852.

Mr. Justice LUSH: Granted for those years?—Yes.

Mr. HAWKINS: Did you find any register granted to a vessel named the 'Osprey'?—Yes, one.

And one only?—And one only.

And was that an 'Osprey' commanded by Captain MACOMBER?—It was.

Did you find any trace of any register of a vessel called the 'Helvetia'?—None.

Or a register of any vessel commanded either by BEANNETT or FALKENBERG?—None.

Did you search any other register with reference to the 'Osprey'?—Yes.

Did you search at Baltimore?—No, at Westminster, in the Treasury Department, where records of registers granted at every port in the United States are also kept. I searched there for Baltimore.

The LORD CHIEF JUSTICE: That embraces all the ports?—That embraces all the ports, my lord.

Mr. HAWKINS: Did you search the register for Baltimore for the period of 23 or 24 years?—I did.

That is from 1830?—From 1830 down to 1853 inclusive.

Did you find a trace of a register granted to a vessel called the 'Osprey'?—Yes, one.

And one only?—And one only.

Can you tell me in what year that was?—I think the register was granted in 1847. I can tell by reference.

That will be near enough for my purpose. Did you afterwards trace that vessel down?—Yes, I traced that vessel by the books, and I found it gave up its register, and received a new register in New Bedford.

The LORD CHIEF JUSTICE: Gave up its register when?—I think it was in 1849; I have a note, if necessary; and received a new register in 1851 at New Bedford, Captain MACOMBER.

That is the same "MACOMBER 'Osprey'"?—The same "MACOMBER 'Osprey.'"

Mr. Justice LUSH: Did that accord then with the entry you found in the entry at New Bedford?—I had not both before me at the same time; but it accords in this way—the same Captain and so on.

The LORD CHIEF JUSTICE: You did not give the date when the register was granted to the 'Osprey' at New Bedford?—I could not give the exact date, but it was one of those three years.

Mr. HAWKINS: You searched in New York for the Baltimore register, and you found that in 1847, you think, a register had been granted at Baltimore, and you traced that until she gave it up at New Bedford, and received a new one?—That is so.

Mr. Justice LUSH: When did you say she gave it up?

The LORD CHIEF JUSTICE: She gave it up in 1849, and got a new one in 1851.

Mr. Justice LUSH: She was hardly two years without a register?—Probably became enrolled for a short time, entered coasting trade, and then there are no registers; and after awhile, being occupied in the coasting trade, applied for a register, and became foreign again.

Mr. HAWKINS: At Washington did you also search the registers for the purpose of seeing whether any register had been granted to a vessel called the 'Helvetia'?—I did. I searched the register for New Orleans, to see if any register had been granted to any ship, either 'Helvetia' or 'Osprey.'

Did you find any trace of a vessel?—There was none granted in New Orleans in the years 1851 or 1852.

You told us, I think, you searched the New Jersey Custom House?—Yes.

Did you make any search with reference to another vessel called the 'Liberty'?—I did.

Mr. Justice MELLOR: Where?—At New York, my lord.

Mr. HAWKINS: During the years 1863 and 1864, I think?—Yes.

What vessels called the 'Liberty' did you find had arrived at New York during those years?—Four had arrived; one the very end of 1864, which is beyond the date.

The LORD CHIEF JUSTICE: Four different vessels?—Four different vessels of the name.

Mr. Justice MELLOR: Had arrived at New York?—Had arrived at New York.

Mr. Justice LUSH: In those two years?—In those two years; one arrived on the 28th December, 1863. It was a British ship called the 'Liberty,' WILLETT, master, from Liverpool, and the cargo was coal, brick, rosin, and such things. The next arrived on the 30th January, 1864, the 'Liberty,' from Liverpool, an American vessel, HARRISON, master. She was a collier. The third ship was one which arrived on the 23rd November, 1864, the ship 'Liberty' from Vera Cruz, OMELETTE, master, and she had no cargo.

The LORD CHIEF JUSTICE: She came in ballast?—She came in ballast. Then there was another, a steamer called the 'Liberty,' regularly plying backwards and forwards from Havannah to New York, the first arrival in New York being July 16th, 1864, and then she continued to arrive once or twice a month.

Mr. HAWKINS: You searched her crew list?—I searched her crew list for the whole of the year 1864, and found there was no such person as JEAN LUIE on board.

Dr. KENEALY: Are we to have the contents of the crew list given by this person?

The LORD CHIEF JUSTICE: Where were the crew lists kept?—In the Custom House filed with the ship's papers.

The ship's log?—Yes.

The LORD CHIEF JUSTICE: That is the same thing, papers kept by an official not within our jurisdiction, and therefore open to secondary evidence.

Dr. KENEALY: This is a crew list made by a private individual.

The LORD CHIEF JUSTICE: Then they are handed over as official documents to the Custom House. They are bound to be kept in the course of duty, and having been kept are handed over. It is the case here, and I suppose is the case there. Therefore, being official documents we cannot compel their production; and therefore having been examined out there, we can get their contents; at all events it is on the same footing as the other. You searched her crew list?—For the whole of 1864 from July the 15th, her first arrival.

From July the 15th to the end of the year?—To the end of the year.

And did not find a LUIE?—No.

Mr. HAWKINS: Did you also search for a vessel called the 'Arbridge' or 'Arbright'?—I did.

For what period did you search?—I searched the Clearance Book of New York from 1st July, 1864, to the end of 1865.

You searched the Clearance Book for the vessel?—For the vessel.

Mr. Justice LUSH: What vessel did you search for?—For the 'Arbridge,' or something similar. You will find in a printed note he spells the name 'Arbridge,' but I searched for anything similar.

Mr. HAWKINS: Anything that bore any resemblance to it?—Anything that bore any resemblance to it.

The LORD CHIEF JUSTICE: From June, 1864, to the end of 1865?—Yes.

Mr. HAWKINS: Did you find any trace of any such vessel?—None. There was a vessel called the 'Arkwright,' the particulars of which I made a copy of. She cleared from New York the 26th of August, 1864, and again on the 6th of February, 1865, and the master was CAULKINS. Her first voyage was to Liverpool, and her second to Bremen.

Mr. Justice LUSH: An American vessel?—No, my lord, an English vessel.

Mr. HAWKINS: Did you make any search for a vessel called the 'Ohio'?—I did.

Mr. Justice LUSH: At New York?—No, at Boston.

The other searches were at New York?—The 'Liberty' and Arbridge' were at New York, my lord.

Did you search the records of arrival there?—I did.

The LORD CHIEF JUSTICE: At the Clearance Office?—At the Custom House at Boston, my lord, for the years 1859, 1860, 1861.

Mr. HAWKINS: Did you find that any vessel had arrived during those years called the 'Ohio'?—Yes, one, and one only.

And on what date had she arrived?—December the 8th, 1859, the American ship 'Ohio,' HUTCHINGS, master, from Riga.

Had arrived?—Yes.

Did you during that period search to see if any vessel called the 'Ohio' had cleared for a foreign port?—I did.

Was there any vessel had cleared for a foreign port?—No vessel of that name.

Did you search for any vessels called 'Ohios' clearing coastwise?—I did.

Did you find that this same 'Ohio,' Captain HUTCHINGS, had cleared?—Yes, January, 1860, the 'Ohio,' HUTCHINGS, master, had cleared for New Orleans.

The LORD CHIEF JUSTICE: That would be as a coaster?—As a coaster, my lord.

Mr. HAWKINS: Did you search the crew lists?—I did.

Did you find any trace of the name of LUIE?—None whatever.

Did you make inquiries—I must not ask you any statements made—of a gentleman named FUNCKE?—I did.

You saw that gentleman, did you?—I did.

Mr. Justice MELLOR: At New York or Boston?—At New York, a broker at New York.

Mr. HAWKINS: Is Mr. FUNCKE a gentleman in considerable business there?—Apparently in very large business indeed.

Mr. Justice MELLOR: What business?—As a shipbroker.

Mr. HAWKINS: Did you make inquiry for the books which were kept by Mr. FUNCKE in the years 1853 and 1854?—I did.

Were you able to see any such books?—No.

As far as you know were any such books in existence?—No.

The LORD CHIEF JUSTICE: Did Mr. FUNCKE refuse to show you?—No, my lord. Shall I tell you what he said?

I framed my question for the very purpose of showing it was not unwillingness, because that would be discreditable?—No, it was not, on the contrary Mr. FUNCKE was quite courteous.

He could not show you any?—No, he could not show me any book.

Dr. KENEALY: I have no objection to your lordship asking him why.

The LORD CHIEF JUSTICE: Very well.—The books had been destroyed on change of office.

He said so, did he?—Yes, my lord.

The LORD CHIEF JUSTICE: I take for granted that a gentleman in his position would not refuse any assistance he could give to either side.

Mr. HAWKINS: There was no book he could show which recorded any transactions of that period?—He had no books earlier than 1856.

You had a long communication with Mr. FUNCKE?—Yes.

Did you after that request Mr. FUNCKE to accompany you to England?—I did.

For the purpose of giving evidence?—I did.

Did Mr. FUNCKE decline to leave New York?—Yes.

May I ask you what reason he assigned for that?—He said he would not go for £20,000. His business was so large at that season of the year—he ridiculed the idea at once.

He could not leave his business?—He could not leave his business.

Did you do your best to induce him to go?—I did. I mean I was snuffed out the moment I suggested it. It is no use going into the matter.

What did you find in the course of your search—at the Treasury Department was it?—with reference to any list or memorandum of an American 'Osprey'?—Yes, they had filed there a memorandum of 'Ospreys' at the Treasury at Washington; in consequence of the frequent enquiries they had about 'Ospreys' they had filed a memorandum.

You made an examined copy of it?—I did.

Dr. KENEALY: I do not know whether this was in the course of their duty, or to save themselves trouble, or what the purpose was. I mean did it save himself trouble?

Mr. Justice MELLOR: It was no part of their duty, but done for their own convenience.

The LORD CHIEF JUSTICE: I suppose to have the answers ready.

Dr. KENEALY: Would your lordship hold that to be admissible?

MR. JUSTICE HANNEN.*

The LORD CHIEF JUSTICE: Oh, no.

Mr. HAWKINS: I will withdraw it; I will not discuss it.

At all events, the examined copy of the document you have?—I have.

You have already told me you made inquiry and brought over the Stevedore's book. Did you make search to find out any grog shop kept by LUIE in New York?—I caused searches to be made. Those searches I did not make myself.

The Witness you have brought over?—The Witness I have brought over.

And did you cause some inquiry to be made at Chicago?—I did.

Did you make any inquiry for any person called KIMBERB or KINBERG?—Yes. I discovered one person at Brooklyn—the other side of the East River from New York—a brother-in-law of THOMPSON, the Stevedore. He was a ship-chandler by business.

The LORD CHIEF JUSTICE: A man named what?—KINBERG.

Mr. HAWKINS: Was that the only person of the name of KINBERG you could find?—Well, there was another person at Newark I noticed in the directory and made inquiries and found it was an old lady who had died about six months.

The LORD CHIEF JUSTICE: Then the only person you could find of the name of KINBERG was a ship-chandler at Brooklyn?—Yes.

Mr. HAWKINS: Did you search to find any trace of a person named FALCKENBERG as a shipowner?—I did.

Did you find any trace of a man named FALCKENBERG, a shipowner?—None. I should say I made inquiry of various people. I had no document.

Did you make, yourself, personal inquiries to know whether there is any such street as Caroline Street in Jersey City?—I did not make inquiry through the street there; but in New York whether there was such a place; but I had the inquiry made distinctly.

Well, if it was more particularly done by some other gentleman I will not trouble you with it?—It has been done.

As far as you could, did you make thorough inquiries for a person of the name of LUIE?—Yes, most certainly.

Were you able during your inquiries to obtain any trace of a person bearing that name?—Not any trace of such a person in New York—a sailmaker or anything else.

I do not know whether your attention was directed to that part of LUIE'S evidence in which he stated that he had given to Mr. WHALLEY the names and addresses?—Yes.

Did you go to the places he mentioned as having been given to Mr. WHALLEY?—I did not go to all the places—in fact, some did not exist. I did not go to the different addresses, but went to Mr. FUNCKE, and everybody who could be seen—the successor of THOMPSON the Stevedore, and so on.

Everybody?—Everybody that it was feasible to accomplish.

Cross-examined by Dr. KENEALY.

You say you have made yourself acquainted with the foreign law on the subject of customs?—Yes.

And that, I suppose, for the purposes of this Trial?—Yes.

And with that sole object in view?—Solely.

Let me see that bird's-eye view of yours (it was handed to Dr. KENEALY). Where is Staten Island represented here?—This (pointing).

The LORD CHIEF JUSTICE: Then I understand the other side of the Narrow is not called Staten Island?—No; the other side of the Narrow would be Long Island.

Dr. KENEALY: Is this Long Island (pointing)?—Down here (pointing).

The LORD CHIEF JUSTICE: The Narrow divides the two islands?—Yes.

Dr. KENEALY: And outside Staten Island is the open sea?—Yes.

* Mr. Justice HANNEN was this day present for a short time in Court, out of curiosity, so we insert his portrait.

Did you make yourself acquainted with the Quarantine Point there?—Yes.

Could you show it to me at all on this map?—Yes. (Pointing it out.) It is at Tomkinsville Landing.

The LORD CHIEF JUSTICE: What do you call it?—Quarantine Station, where the Health Officers of the port reside.

Dr. KENEALY: Where did they board you when you went out. Was it outside or not?—It was just opposite Quarantine.

Had you entered the Narrows when they boarded you?—Yes.

Do you mean you had come into the Harbour?—Come inside the Narrows, not far inside the Narrows. You see Quarantine Point is a very little distance inside the Narrows.

I wanted to know whether they boarded you before you came into this harbour or before you came into the Narrow?—Just inside the Narrow, here (pointing it out).

Mr. HAWKINS: If your lordship would like to see the chart, I have marked it (handing it to his lordship)?

Dr. KENEALY: Then it was that the Quarantine Officers came on board?—Yes.

After they were on board did the Custom-House Officers come on board?—I think the Custom House-Officers came in the same boat.

In the same boat as the Quarantine?—The same boat as the Health Officers.

But did not come on board until after?—No, they came on board at the same time. I know they boarded us about the same moment, but whether they rowed up in another boat at the side, I cannot swear; but about the same moment as we stopped both came on board.

But you are not prepared to say they came in the same boat?—I believe they came in the same boat; but I would not assert it positively. My belief is that they did.

Can you point out on this Staten Island where the Custom House is?—There is no Custom House on Staten Island.

How far is Staten Island from New York City?—You see it varies in its distance. I should say about six miles. I only judge its distance from my own eye. I do not profess to be absolutely accurate.

I should like to know what particular statute you consulted with reference to this Staten Island?—I think Mr. STEPHENSON has my notes of the American law, if he will give me 'Brightly's Digest.'

I thought you said you had it in your notes?—Well, I have a reference here to volume one. It appears in a statute passed on the 17th March, 1799.

And that, you say, places Staten Island within the Customs' jurisdiction of New York?—Yes.

Can you give us the section?—No, I cannot.

Then may I take it you have not consulted the Act?—I have not consulted the originals—only this, with the opinion given at the time by Mr. SEWARD.

You are giving your evidence as an expert in American law?—There is a gentleman here who can tell you.

Do you decline to give it or not? If you say you are an expert I will test it?—I say I am not. I say that I have consulted the law on this particular point.

The LORD CHIEF JUSTICE: From that Digest?—From that Digest.

Mr. HAWKINS: I am going to call a member of the American Bar.

Dr. KENEALY: But you have used this gentleman, and I must use him now. Will you tell us the page and read us the passage?—The page is 692, and it says, "In the State of New York there shall be six districts, to wit: Sag Harbour, on Nassau or Long Island, the City of New York, the City of Hudson, Champlain, Oswego, and Niagara." Then at the time Mr. SEWARD——

Do not tell me about Mr. SEWARD. I am asking you as an expert?—All I know is that I knew it from a verbal statement of an American lawyer.

Then it is not from that Digest you picked up your knowledge, but from some one else?—From this Digest, read to me by an American Lawyer, who said, "That is what you want."

Is there a word about Staten Island in that part of the Digest?—No; but I know there is in the statute to which the reference is.

Do not give us your "no doubts." You ought to know better than to tell us "no doubt."—You must understand clearly on this point all I know or what I ascertained of the law at the time.

Asking a Lawyer is not ascertaining the law.

Mr. Justice LUSH: Yes, that is one mode.

The LORD CHIEF JUSTICE: How much law do we not learn from those under whose instructions we are placed?

Dr. KENEALY: A question asked for one specific purpose of an American Lawyer.

The LORD CHIEF JUSTICE: At the time they said they were going to call a gentleman of the American Bar.

Dr. KENEALY: I know; but then they ought not to have asked this gentleman—that is all I complain of.

Mr. Justice LUSH: It has been held that a merchant is able to give evidence of foreign law, and his source of information may be foreign lawyers whom he has consulted in the foreign country.

Dr. KENEALY: I never knew if I went to an American lawyer and asked him a question on a specific case that I should be allowed to give evidence.

The WITNESS: Allow me to read on. I did not read far enough. The next section provides that the districts of the city of New York shall include all such parts of the coast, rivers, bays, and harbours of the said city as are not included in other districts of the same state, and there you will find all the other districts are. Now, Staten Island is not named; and therefore that is no doubt the reason that Staten Island was included in New York.

Dr. KENEALY: The reason why you think it is included is that it is not named?—Yes; because there is an especial inclusion in the district of New York of anything that is not named; and no doubt these are the two sections I read at the time. I never went into them because I knew there was an American lawyer to prove them at the time.

How long were you at the Custom House of New York?—Many hours on the first occasion—from perhaps eleven to three; and on another occasion from about half an hour to an hour.

Did you find that the entries in 1854 were made very regularly?—The entries in the year 1854—Yes, every entry I found in the books for that year seemed perfectly regularly kept.

And all the entries consecutive? Are all the dates you saw consecutive?—The dates were consecutive as far as I saw.

Are you able to say whether they were or not? We have made inquiries in New York, and I must ask you to be careful, without meaning you any offence at all. Are you prepared now to say that?—I am prepared to say they are apparently so. Of course it is humanly impossible I could swear the 11th of August did not appear on some particular occasion after the 12th; but so far as ordinary inspection goes the books are regularly kept. There is not anything in the slightest degree indicating any irregularity or anything of the sort in any of the books I examined.

Are you prepared first to swear that the entries are regular, that is going on from day to day in a consecutive order?—Yes, I am prepared to say so, with this proviso, that it may happen that a ship arrived on the 11th might be reported a few hours or a day or two later than a ship arriving on the 12th, but so far as the substantial consecutiveness goes, I am quite prepared.

Are you prepared to say that the entries are consecutive in the year 1854 in the Custom House book of New York? Now consider your answer before answering?—I am perfectly prepared to say they are.

But sometimes you say the 11th follows the 12th?—No, I say it is humanly impossible for me to say there might not be such a transposition.

What made you say the 11th might come after the 12th if you did not discover it?—Merely as an illustration.

Did you find any such instance?—None whatever.

Then not finding any instance of the 11th following the 12th, are you able to say there is no such thing there?—I have just said the reverse; how can I say there is no such thing? I say the years go on regularly, but it is humanly impossible one ship might be reported out of its turn, and I cannot say it is not. Mind you, the books I examined. It is possible some other books may be in existence, but I am speaking of the arrivals and clearances.

I am speaking of the arrivals and clearances at New York in 1854, and am putting it to you seriously, whether you are prepared to say the entries are in due consecutive order from the beginning to the end of the year 1854?—Yes, in the book I examined, I am prepared to say so.

Was the book you examined the original book or a copy?—The book I examined was the book in which everything was posted alphabetically.

Posted from what?—Posted probably from the ledgers. I should tell you that I went up to the Record Department, where the things having arrived, compiled from the ship's papers, the records are made, and made alphabetically.

And the original ledgers themselves, as I understand you, you did not examine?—The original ledgers in the case of the clearance books. The clearance books had always been kept alphabetically, as I understood from the clerk who showed them. The arrival book, or what is called the tonnage book, had not been, but the ledger of course is copied from the ship's papers.

Did you examine the original ledgers or not for 1854?—The book I examined was the original ledger. The alphabetical book was an original ledger and kept alphabetically, and the clearance book was an original ledger which had always been kept so from the moment of the arrival of the ship.

I thought you told me that the book you examined was posted from something else?—Yes, and so the record to the customs must be posted from something else.

Then I want to know whether you examined that something else from which the record was posted?—No, I did not.

You contented yourself with examining the record book?—Yes, the only book feasible to examine.

Were the originals destroyed?—No.

Then do not say the only book feasible?—I mean as a matter of time.

Then it was simply want of time prevented you examining the original ledgers?—No, I do not think that alone, but I was perfectly satisfied that the alphabetical record was as much an original ledger as the other. Both must be compiled from something else—the ship's papers.

The LORD CHIEF JUSTICE: Of course.

Dr. KENEALY: That may be very satisfactory reasoning to you?—I had to exercise my own judgment there.

I want to know whether it was possible for you to examine the original ledgers if you had time?—It was possible for me to ex-

amine in one case, the arrivals, another book containing the same matter not alphabetical.

Do not call them the same matter. You never compared them. Will you be good enough to consider the weight of words?

The LORD CHIEF JUSTICE: I understood him to say they told him what they were, and he took the final record of which this is the official record. He must have gone back still further to the ship's papers if he went to the original source.

Dr. KENEALY; Well, perhaps he ought to have done so.

The LORD CHIEF JUSTICE: I do not say so at all

Dr. KENEALY: You saw the clearance book. There was not any other clearance book than that which you examined; I understand that is correct?—That is my recollection. I examined one and was told that was the original that had been kept; the original alphabetically but not posted.

Who told you that there was no original clearance book but that which you examined?—If you will allow me to look at my notes.

Certainly. I want to know the name of this Custom-House Officer who told you that that was the original clearance book?—I find with regard to the clearance book I examined two clearance books, and both had been kept alphabetically.

That does not help me. I want you to tell me the name of the Custom-House Officer?—I cannot tell you the name of the Custom-House Officer. I went up to the Record Department; two or three officers were in attendance, and produced everything asked for.

Did any officer of the Custom House tell you that there was no original clearance book?—That there was no original clearance book?

Yes, that is, there was no original clearance book made as a vessel is cleared out, like a day-book?—There is no such thing humanly can be kept as vessels go out.

Is anything like a day-book kept in the Custom House, in which they enter all ships that clear out of port, in the nature of a day-book, which is afterwards posted in a ledger?—In the case, as I say, of the clearances, my belief is as I tell you. I examined the alphabetical clearance book and my belief is that that book was kept with an alphabetical heading, and, therefore, as ships were reported, they were entered under the alphabetical letter, and consequently both were alphabetical.

Is it an impression, or are you prepared to swear it as a fact, that there was no clearance book kept day by day from which the alphabetical book was afterwards made up?—I can swear that none such was shown to me, but whether such is kept I cannot say, except that I inquired at the time for the clearance books, and was shown two and examined both, and both were alphabetical.

Did you inquire for a book kept day by day, either clearance or entrance?—Not in those words.

The LORD CHIEF JUSTICE: Are the entries from day to day?—No; the entries must come irregularly, according to the reports they get.

When they get the reports, do they put down the day?—Certainly; but the dates in that book would not be consecutive, possibly.

Dr. KENEALY: Do you mean to say that no book is kept in the Custom House of New York showing entries and departures day by day in 1854? Now consider.—Yes, I am trying to recollect. There was, as I told you, a book showing arrivals day by day; there was also a book showing the clearance, no doubt day by day; but in the case of the second clearance book, from which the recorded one would be compiled, I believe it was also alphabetical.

But you did not examine that?—Yes; I examined that. I found the record of them, and examined two record books.

The LORD CHIEF JUSTICE: I am sure I do not understand what you mean you examined.—I will explain, if your lordship will allow me. I went to the Record Department, where all these things were posted alphabetically and the records put by. I examined the alphabetical clearance book, and the alphabetical arrival book. I saw the book from which the arrival book was compiled. It was not arranged in alphabetical order, but kept as a day-book. I saw the book from which the alphabetical clearance book was compiled, and that was arranged alphabetically.

Then you saw the originals as well as the final record?—Yes, I saw two sets of books.

Dr. KENEALY: But I do not understand you swearing that you examined either of those two although you saw them?—I say in the case of the clearance book I examined it, not the arrival book.

Now what examination did you make of the original clearance book in 1854?—From the 1st of July, 1853, to the 1st of May, 1854.

Did you find entries of a ship at all of the name of the 'Osprey' from the 1st of July, 1853, to the 1st of May, 1854?—No entry whatever.

Of any 'Osprey'?—Of any 'Osprey.'

Where is that book—that was kept at New York and made out in New York as I understand?—I presume so, kept at New York.

If a captain of a ship passes through the Narrows and gets into the harbour, he is boarded, I suppose, by the Custom-House Officers, and the report of that Custom-House Officer an entry is made of at New York?—Yes.

The LORD CHIEF JUSTICE: Alone?—And I presume the "manifest" is handed over to the officer.

Your answer seemed to imply that it was by the Custom-House Officer alone?—I do not mean to say so.

Dr. KENEALY: He makes a report and brings the manifest of the ship.

The LORD CHIEF JUSTICE: Does he? He assumes it is?—I presume it is the captain.

Dr. KENEALY: Do you know anything about it?—I have been told that.

No?—I cannot answer it in any other way. I have been told that the copy of the manifest is handed to the boarding officers.

As I understand, you looked into the alphabet, and under the letter "O," for 'Osprey'?—Yes.

And not finding 'Osprey' there, that did not take you seven or eight hours?—No.

You found no 'Osprey' in the index?—No 'Osprey' in the index. It was not merely an index, because all the particulars were set, of course, against the name of each. It was not an index of ships in the book.

But was there an index as well as an alphabetical record?—No, there was no index.

You searched through the pages that contained the letter "O"?—Yes.

And that satisfied you?—That satisfied me.

That did not take more than five or six minutes, I suppose?—Oh, yes; it took a good deal more than that.

"O" is not a usual letter to begin a ship's name, but a very unusual one?—I think it is a tolerably common one.

Can you tell us, for instance, how many entries there were under the letter "O" from the 1st of July to the 1st of May?—Oh, I should think many hundreds.

But will you say so?—It is perfectly impossible for me to say so. I mean there were a large number; I could not form anything like an approximate estimate.

Were there three or four pages?—Yes.

Having examined these three or four pages you were satisfied?—I examined two sets of books; each took some time, and then there was a considerable time in getting what I wanted. The mere search for an 'Osprey' did not occupy very long in either set of books.

It could not occupy more than ten or fifteen minutes, I suppose?—Yes, probably the search occupied half-an-hour, or three-quarters.

Now, did you make any inquiries at all at Staten Island what was the practice in 1854?—I did.

Was there any representative of the Customs at Staten Island?—When I say I made inquiries, I did not make the inquiries at Staten Island. I made inquiries of what was the practice at Staten Island. Those inquiries I made of a person from Staten Island, but the inquiry I made at New York.

At New York, from a person who was at Staten Island, as he said?—Yes.

The LORD CHIEF JUSTICE: About what?—About the boarding, I suppose, Dr. KENEALY means.

Then do not answer in such a way. The question was as vague as it possibly could be. Inquiries might have been made at Staten Island about the latitude and longitude, and you should get the question precise.

Dr. KENEALY: Was the person from whom you made the inquiries an official at Staten Island in 1854?

The LORD CHIEF JUSTICE: First; what were the inquiries about?

Dr. KENEALY: I wanted first to see whether he inquired from the right person.

The LORD CHIEF JUSTICE: That would depend upon what the subject inquired about was.

Dr. KENEALY: Was the person engaged about the Customs on Staten Island in 1854?

The LORD CHIEF JUSTICE: Yes.

Dr. KENEALY: Did you make any inquiry who was the Custom-House Officer employed about Staten Island in 1854?

Mr. Justice MELLOR: As I understood, there was no Custom-House there.

Dr. KENEALY: There is no Custom House now.

The LORD CHIEF JUSTICE: Nor was then. We have had no evidence of any Custom House.

Dr. KENEALY: I have not heard that there was not.

The LORD CHIEF JUSTICE: I have not heard that there was.—There was not a Custom House, but a Custom House station, where the boarding Officer lived.

Dr. KENEALY: Was there not a Custom-House Officer in Staten Island in 1854?—There was what I have stated, a station where the boarding Officer resided.

The LORD CHIEF JUSTICE: But where records were kept?—There was a record kept by each ship that the boarding Officers boarded; the ship's manifest, and so on, were not deposited there.

Dr. KENEALY: There was a record there, was not there, of each ship the Custom-House Officers boarded?—Yes, this is it.

Did you see the Custom-House Officer who was in the habit of keeping that record in 1854?—I did not.

Did you inquire for him?—I did not.

The LORD CHIEF JUSTICE: I think you said you saw the book?—There is a Witness here who identifies the book, my lord.

Dr. KENEALY: That book is brought from Staten Island under the year 1854, as I understood. Is that so?—Yes, this book contains the ships the boarding Officer visited in that year.

Can you give me any reason why you did not make any inquiry of that Officer stationed at Staten Island as to the mode in which the business was done?—In the first place, I had a person who fully identified the book, who was in the Custom-House service, who knew all about it, and who was prepared to speak to it and is here.

I am not throwing doubt on the identity of the book, but asking for any reason, as you were taking your knowledge from officials in New York, why you did not inquire for the person who could give you the best information as to the best mode of doing business in 1854 in Staten Island?—I can give you two or three reasons. One, that it was unnecessary with the materials I had; and another reason was that it never occurred to me, I fancy.

Probably the latter would be the more likely, that it never occurred to you. Were you in communication with Secretary RICHARDSON?—Yes.

What office do you say he fills?—He is Secretary to the Treasury of the United States.

When did you ask him to allow you to bring those books to England?—I was in Washington on Monday, the 10th of November.

And on that day you asked him to allow you to bring the books to England?—I did.

And, as I understand, he refused?—He refused.

And so you went to Newark and you saw piles of ship's papers. Were those kept on a file?—No, they were kept in pigeon-holes in a press.

Did you examine those sufficiently to be able to say whether they were kept regularly from day to day?—These are ships' papers, not books. The ships' papers would be simply a bundle put together like this, manifest, crew list and so on. I asked for a bundle for a particular time, received it out of the pigeon hole, and went through each paper.

Did they go on from day to day or were there blanks?—Newark is a very small port and had very few papers indeed; there would be nothing day by day. A foreign ship would not come in more than once in a month or two months.

Then there were four or five files which you found, and that is all?—There were very few indeed, two or three ships and the papers referring to each.

Representing intervals of a week or a month?—As I say, what the interval between each was I cannot tell you, but probably only three or four ships arrived there from foreign parts in the time.

And does the same answer apply to the files you found at Perthamboy?—No, the files I found at Perthamboy were all laid out on a table when I arrived. I had telegraphed when my arrival would be, and the collector had them all ready, as he told me, for Mr. WHALLEY'S examination, and I went through them. They were much more numerous than the others.

Did he tell you he had gone through them with Mr. WHALLEY?—That he had searched them out for his own use, and I presume Mr. WHALLEY had examined them.

Did he tell you they were very irregularly kept in 1854?—No, he did not.

Did you ask him whether they were regularly kept or not?—I asked him whether these were all the records of 1854, and he said they were, to the best of his knowledge.

But did not he say that in 1854 they were not very particular how they kept those records?—No.

Or words to that effect?—No, nor could he, because the man told me he was not there in 1854.

Then he did not tell you that?—No.

Or anything to that effect?—Or anything to that effect.

Could you give us any idea at all, how many of those files you found at Perthamboy for the first four months of 1854—were there a dozen?—There was a bundle for the two years of probably about a hundred ships laid out. I suppose those for that port would not be more than twenty or thirty.

Were there so many the first four months of 1854 as that?—I think there were. I went, I recollect, through the whole two bundles.

I thought I took a note that it was the first four months of 1854. I may be wrong.—Yes; but I recollect, now you call my attention to it, that I examined not only that period but the whole bundles that were laid before me.

For two years?—For two years.

Beginning in 1854?—Beginning in 1853, and the whole of 1854.

And you cannot form any idea of the number that represented the first few months of 1854?—I remember the ships' papers connected with foreign ships would be very small indeed, not more than in the case of Newark; but there was a considerable number connected with wrecks and boats connected with the harbour of Perthamboy, that carried off salvage and so on from wrecks, and that swelled the number.

And not more than three or four foreign ships?—Not more than three or four foreign ships.

Is there any record kept in the Quarantine Office of the ships they visited?—No doubt there is; but the old Quarantine Station was burned down in 1859, I was told, and they had none.

All their records were destroyed?—Yes.

And since then are the records kept?—I believe they are, but I did not inquire further than had they any records of the port, and they said no, everything had been destroyed in 1859.

What search was this you made as coming down to the steamboat in the morning?—The search of the records of the Pilot Commissioners of New Jersey.

That did not take you very long, I suppose?—No; it took me about twenty minutes, I should think.

Were you on the boat at the time?—No; I stopped at Mr. SEWARD'S office at the time.

When did you go to the New Bedford Custom House?—That was the 8th of November.

And about how long were you examining the records there?—About half an hour; they were not very numerous.

Did you examine these from the record book or day-book?—From the book lettered arrival book and clearance book.

Did that appear to be in the nature of a record that is made from something else or an original book?—An original book, and for this reason, the entries of foreign ships were so few and far between, that I fancy it would have been absurd to keep a double set of books.

Had that an index?—It had no index.

You turned over the leaves?—Yes; no book that I examined had an index.

When you went to the record of registers granted at New Bedford for three years, did you find the name of FALCKENBERG at all in that book?—No, not at all; certainly I did not at all.

The LORD CHIEF JUSTICE: In which book?

Dr. KENEALY: In the record of registers granted in New Bedford for 1850, 1851, and 1852?—No, I did not find the name of FALCKENBERG at all.

Did you look for the name of FALCKENBERG?—I did.

How did you look for it?—In the owner's column. There are the owners to whom the registers are granted, and I went through the column name by name.

How many pages do you say you examined in those three years for the name of FALCKENBERG?—I went through the whole book.

Page by page or what?—I went through the book page by page.

Are you prepared to swear that a vessel called the 'Falckenberg' was not entered in that book?—A vessel—no, certainly not—but the name of the owner.

I asked whether you did or did not find the name of Falckenberg?—I did not find the name of FALCKENBERG—but the 'Falckenberg' might have been the name of a ship. I certainly did not look for the name but the list of owners.

You did not look for a vessel of the name of 'Falckenberg'?—No, certainly not.

Did you inquire whether this Baron FALCKENBERG had not a vessel called after himself?—I made inquiry, and Mr. FUNCKE told me that he never had a share in a ship in his life; but was a man almost starving.

I am obliged to you for putting that on me.

The LORD CHIEF JUSTICE: But that would be a very good reason.

The WITNESS: You asked for it most distinctly.

Dr. KENEALY:—Did Mr. FUNCKE tell you that before you went to New Bedford?—He did.

When did you see Mr. FUNCKE?—I think it was on the Thursday or Friday, the 6th or the 7th. I cannot tell you the day, because I was at work the whole of the time; and I cannot specify the evening I got to Mr. FUNCKE.

And it was in consequence of what Mr. FUNCKE told you?—I said nothing of the sort.

The LORD CHIEF JUSTICE: He says, I gave you a sufficient reason why he was not an owner.

Mr. Justice LUSH: You asked whether a vessel called the 'Falckenberg' had been owned by FALCKENBERG.

The LORD CHIEF JUSTICE: And he says, "No; Mr. FUNCKE told me he had not a share."

Dr. KENEALY:—He gives that as a sufficient reason?—I did not give it as a reason. I did not look for a ship of the name of 'Falckenberg,' because I never heard of a ship of that name.

Never heard a suggestion?—That there was a ship named the 'Falckenberg.'

At all events you never made inquiry at New Bedford?—I made inquiry for no ship belonging to Baron FALCKENBERG, and Baron FALCKENBERG'S name did not appear in the list of owners for those years in any form or list, or in any shape whatever.

Who did you make inquiry of at New Bedford—who told you that?—I examined a book; it was not a matter of inquiry.

Then you did not make inquiry?—I examined the register of records and registers granted.

Do you call that making inquiry?—Yes, I do—the highest class of inquiry I could make.

That you did not inquire of anybody personally whether FALCKENBERG was the owner of ships or not?—I did.

At New Bedford?—Not at New Bedford. I did at New York.

You say you searched the crew lists of the 'Ohio'?—Of the 'Ohio.'

At Boston?—Yes.

Were those the only crew lists you searched?—No; I searched the lists of the 'Liberty.'

Where did you search the 'Liberty'?—At new York; in fact, that is what took up the time, because there were a great many crew lists.

Were there indexes of the names of them?—No.

Have you brought over here the list of the crew in the 'Liberty'?—I have not.

Nor any list of any crew?—Yes, I have brought a list of the 'Ohio' crew.

Why not in the 'Liberty'?—Because in the 'Liberty' there was no person of the name of LUIE mentioned; but when examining the 'Ohio' papers, the name of one DANE appeared—a sail-maker—taken on board at Elsinore, and I thought LUIE might be identical with him.

What was the name?—JANSEN.

What name did you look for?—JOHN or JEAN LUIE, or anything similar to it—LEWIS, or anything.

Did you look for LEWIS?—Yes, I believe I did.

Will you swear it—JOHN LEWIS?—Well, I saw there was no JOHN LEWIS.

Did you look for JOHN LEWIS?—That I had in my mind JOHN LEWIS, I cannot say; but I went through the lists carefully, with my eye constantly directed to anything of that sort, and found one named JONES, and found a difficulty, and compared it with others to be certain it was JONES, and I swear there was no JOHN LEWIS.

Although you had not it in your mind to look for JOHN LEWIS or LEWIS in the 'Liberty' crew, you are prepared to swear there was no such name in the list?—I am.

Now, you say you saw Mr. FUNCKE, did you think it your duty at all to go to the British Consul at New York?—I saw the British Consul. I do not know that I thought it was my duty to go there.

Did you have any conversation with him?—Yes.

Did you get any assistance from him?—No direct assistance; but I believe he wrote to Sir EDWARD THORNTON, saying who I was, and I had an interview with Sir EDWARD THORNTON, to get a letter of introduction to Mr. RICHARDSON.

Did he render you any assistance with reference to your inquiries after the ship?—None. I did not ask him for any.

Did you go to the Norwegian Consul at all?—No, I did not.

The LORD CHIEF JUSTICE: I suppose the British Consul would have nothing to do with the American shipping?—No, my lord.

Dr. KENEALY: You knew this man was a Dane?—Who was? LUIE?—Yes, I knew he had said so.

Was it because you did not believe him that you did not go to the Norwegian Consul?—No, it was not because I did not believe him, but because there was no necessity whatever. I had examined three different sets of records, and I did not see that going would throw additional light upon the matter.

Did you go to the agents of the French LLOYD'S there?—No.

What are FUNCKE and MEINKE carrying on their name as now?—FUNCKE and EADIER.

You say you had a conversation with Mr. FUNCKE about FALCKENBERG?—Yes.

Did he tell you FALCKENBERG'S son was living at Quebec?—He did not, but I was aware that FALCKENBERG'S son was living in Quebec.

Did you think it your duty if you wanted to discover the truth about FALCKENBERG, to go to Quebec and make inquiry there?—No, I telegraphed to Quebec.

You did not go to Quebec?—No, certainly not. I could not.

Who told you that FALCKENBERG'S son was at Quebec?—Mr. MCKIE.

Who is he?—LLOYD'S agent in America.

Did he tell you what business he was carrying on?—No. I think he told me that FALCKENBERG'S son was a very young man, whom I considered would be a child at the time in question.

Did not it occur to you that he might have his father's books or papers?—Yes, and I telegraphed to ascertain whether he had them or not, and he said he had not; at least, the widow said he had not.

You know it is most improper of you to give me that answer.

The LORD CHIEF JUSTICE: Not at all.

The WITNESS: I do not know where I can stop my answer.

Dr. KENEALY: I did not ask you anything about your telegrams.

The LORD CHIEF JUSTICE: But you asked him whether he did not think it his duty to go to Quebec, and he said "No, because I telegraphed, and got a certain answer."

Dr. KENEALY: He did not say because he got an answer.

The LORD CHIEF JUSTICE: But that is the consequence of it.

Dr. KENEALY: He gives me the contents of it, which I say is most improper.

The LORD CHIEF JUSTICE: And I say it is not!!!

Mr. Justice LUSH: Not at all. It is a reason why he did not do what you say.

The LORD CHIEF JUSTICE: And a most proper one.

Dr. KENEALY: Have you that telegram?—Not here, but it may be in existence, I will tell you the substance of it.

Oh yes, you may tell me the substance, but have you got it?—I do not know whether I have got it or not.

When did you receive that telegram?—While I was in New York. I cannot tell what day, probably four or five days after I got there.

You cannot tell me the date, whether it was the day you left?—It was not the day I left.

Did you hear of the name of PETERSEN at Mr. FUNCKE'S office?—Yes.

Was he the water clerk of Mr. FUNCKE in 1854?—I do not know whether he was water clerk in 1853 or 1854, because Mr. FUNCKE said he did not know in what year he had discharged PETERSEN, whether it was in 1853 or 1854.

It was one of those years PETERSEN was water clerk to Mr. FUNCKE?—I believe so, but the information was very vague. Mr. FUNCKE said about that time he had discharged him for drunkenness, or some ill conduct, he could not fix the time.

I am sure PETERSEN ought to be very much obliged for your giving his character. Did you go to see PETERSEN?—He is dead.

Who told you he was dead?—Mr. CRUZE told me for one, and I heard it at Mr. FUNCKE'S office—whether from his lips I cannot say.

Are you prepared to say that you heard it at Mr. FUNCKE'S office?—I am prepared to say I heard it universally.

Did you hear it from anybody but CRUZE, a Witness in this Case?—Certainly.

Who?—It was almost impossible—a thing that everybody knows and says. For instance, inquiries had been made before I went out. I heard it from our lawyers there. I heard it from Mr. MCKIE.

Who is Mr. MCKIE?—The MCKIE I speak of is the younger son of LLOYDS' agent.

You heard from him that PETERSEN was dead?—Yes.

Did you find out the name of another person employed in 1854, called GODECKE?—No, I never heard of him.

HANELL GODECKE?—I saw no such person.

I did not ask that; but did you find out the name?—No, I have no knowledge of the name. I recollect being told there was an old pensioner of Mr. FUNCKE'S living somewhere, but what the name was I do not know.

Have you any doubt that that was GODECKE?—No opinion one way or the other.

Why connect him with the name of GODECKE?—Because you have just asked me, did I hear of anyone in Mr. GODECKE'S employment, and then it flashes across my mind that there was an old pensioner, who may be GODECKE or anybody else.

Did you ask anything about that old servant in 1854?—I did not.

Did you make any inquiry to discover?—I did not. I do not know that he was in the employment in 1854. I recollect I heard amongst the clerks was a GODECKE—whether in 1854, I do not know.

You heard from the clerks?—No, I do not know from whom, that there was an old clerk Mr. WHALLEY had been in communication with, and that is all I know about the matter.

You did not think it your duty to see the old clerk of FUNCKE and MEINKE?—I did not.

Who told you that Mr. WHALLEY had been in communication with GODECKE?—I think it was MCKIE. Mind, I do not couple the name of GODECKE with it.

The old clerk?—Yes.

Did he tell you that Mr. WHALLEY had told him so?—No, I do not think he did.

Did he tell you how he knew that Mr. WHALLEY had seen GODECKE?—No, I do not think he did. I did not go into the matter; it seemed utterly unimportant.

Did he tell you that GODECKE had told Mr. WHALLEY the number of 'Ospreys'——

Mr. HAWKINS: I must object to this question.

Dr. KENEALY: I am testing this gentleman's credit, my Lord.

The LORD CHIEF JUSTICE: No, you are endeavouring to get out the fact that some one told Mr. WHALLEY something which you would be very glad to prove.

Dr. KENEALY: Which I have proved, I hope, my Lord.

The LORD CHIEF JUSTICE: That is another thing. You have not proved the statement made by the clerk.

Dr. KENEALY: No, my Lord, I have not proved it certainly.

The LORD CHIEF JUSTICE: You are trying to do it.

Dr. KENEALY: Your Lordship rules I cannot ask him what Mr. MCKIE told him in that conversation.

The LORD CHIEF JUSTICE: No, certainly not.

Dr. KENEALY: He has put MCKIE upon me.

The LORD CHIEF JUSTICE: Yes, because you cross-examined him as to whether somebody told him something. "Yes," he says, "I believe MCKIE;" and then you want to found on that the right to get out the whole conversation with MCKIE, and that cannot be done.

Dr. KENEALY: Did Mr. FUNCKE tell you the time when the books were destroyed?—Yes, he said he had changed offices two or three times, and he had a great quantity of old books, and he had them destroyed.

Was there any conversation between you and Mr. FUNCKE about the manifest of the 'Osprey'?—None whatever. There was a conversation about the 'Osprey.' He said he knew of no such vessel at the time, and did not believe that such existed.

How long were you having a conversation with Mr. FUNCKE?—I should think I was there half an hour.

Then you are quite sure he never made any reference to GODECKE?—I tell you there was a reference made to someone whose name I do not recollect, and it may be GODECKE, if you like.

Did he refer you to someone who had been an old Clerk in his employ?—No, he did not refer me to anyone. He told me there had been a Clerk in his employ.

Did not he tell you that if you wanted to ascertain about the 'Osprey,' you had better see that old Clerk?—Certainly not.

Did you talk to CURZE about GODECKE?—No, I did not. I have no recollection of the name whatever, and I am sure I never mentioned it to anyone.

Then "the old Clerk," if you prefer it. Did you talk to CURZE about the old Clerk?—No, I did not.

Did you ascertain the name of a man, JOHN MATTISON, who had been a boatman with FUNCKE and MEINKE?—No.

Did you ask him to give the names of any persons who were in his office in 1854?—Yes, and I found his own impressions on the subject very vague, and that none of the clerks there could fix it; and it appeared to me, from the statement I got, that it was more than probable that PETERSON was not there at all at that period; but could not get anyone definitely to fix the date. He called up some of the clerks who had been longest with them, and they could not fix anything of the kind, there being no record or books.

Was not there anything there said about JOHN MATTISON?—I said nothing to anyone about JOHN MATTISON, or they to me.

The name was not mentioned?—The name was not mentioned whatever.

And the only reason you give that there was no such person in Mr. FUNCKE'S employ is, that you could not get reference to such a particular name—is that so?—The reason was, that I went to everybody who could possibly know anything about it, and prosecuted the inquiry no further than the statement of what they had previously done for Mr. WHALLEY—the state of things they represented.

And do you not remember the name of GODECKE and MATTISON?—No.

Do you remember the name of BIRKMAN, a shipping master of Mr. FUNCKE'S—was his name mentioned?—That his name was mentioned at Mr. FUNCKE'S I do not remember, but BIRKMAN is a name, it having occurred in LUIE'S evidence, that I inquired for.

Did you make any inquiry for BIRKMAN at Mr. FUNCKE'S?—Of that I have no recollection. I think probably I ran through the names, and he said, "He is dead, he is dead," and so on. I asked several whether BIRKMAN occurred amongst them. I do not know.

Was he a shipping master?—BIRKMAN is a man mentioned as a shipping master by LUIE; and I was told he had been shipping master only a few months or a year. He was dead.

Did they tell you what year he had been?—No.

Did you ask?—No, but I asked whether he had left any books or traces, and could find none.

The LORD CHIEF JUSTICE: They told you he was dead?—They told me he was dead, and that there were no books of his in existence that could be found.

Dr. KENEALY: You never saw Mr. FUNCKE, I suppose, but once?—No.

Do you know Brook'yn?—I know where it is, but I do not think I went across to it. Yes, I am wrong; I went across to KINBERG'S.

Was it in Brooklyn you made inquiries after ANDERSEN?—I did not make personal inquiries after ANDERSEN.

There are two other names I must put to you. Did Mr. FUNCKE, or any of his senior Clerks, mention the name of VOLKERT to you as having been in their employ?—No; the only person they mentioned was an old Clerk—who or what he was, or what his name, I do not know.

Or did they mention the name of DAHLSTROM to you?—That is the name mentioned by LUIE; he is dead, I believe.

You do not remember VOLKERT?—No.

ANDERSEN was supposed to live at Brooklyn—was he not?—Yes.

Was not VOLKERT a name mentioned by LUIE?—Not that I recollect; not mentioned by LUIE in the witness-box.

Whom did you employ to make inquiries for you at Brooklyn about ANDERSEN?—A Mr. DE ROSIER.

The LORD CHIEF JUSTICE: I thought you went to Brooklyn to inquire about him yourself?—No; I went to Brooklyn to see KINBERG.

Dr. KENEALY: Did you examine the 'Brooklyn Directory' at all yourself?—Unless it is included in the 'New York Directory' I did not. I do not know whether it is or not.

You looked for the name of ANDERSEN, I suppose, in the 'New York Directory'?—I did not look for the name of ANDERSEN at all. I employed others to do it.

That is that man you have mentioned?—Yes, Mr. DE ROSIER.

What is KINBERG?—A shipchandler.

Did you see KINBERG?—Yes.

Is KINBERG coming over as Witness?—No.

Did you see him at his place of business?—No, I saw him at his private house.

Is he carrying on any business?—That I do not know. He was a shipchandler. I do not know whether he is so or not. He was described to me as a shipchandler, but I do not know whether he has retired or not; I am sure.

Re-examined by Mr. HAWKINS.

You have been examined about a conversation with Mr. FUNCKE?—Yes.

You say you only had one conversation?—Only one.

May I ask whether in that conversation he gave you any further particulars with reference to FUNCKE?—Yes; he told me that FUNCKE had been in his employ there, that he had taken him up originally simply to save him from starvation—subsequently that he had sent him to Quebec and given him a share in his business, made him a partner there, and that he had lost a very large sum of money through him; and that while in New York he certainly to his (Mr. FUNCKE'S) knowledge, had no share in any ship whatever.

The LORD CHIEF JUSTICE: Did he say when he went there?—He was not sure whether it was the spring of 1853 or the spring of 1854, and he had no books he said by which he could fix it.

Mr. HAWKINS: Is that all he said about FALCKENBERG?—Yes, I think that is all he said.

Let me see that I understand about these clearance books. As I understand, you said there were two books?—Yes.

Both of them copied in alphabetical order?—Yes.

Do you mean by that that there is a heading—take for instance vessels whose names begin with A. They are entered under the letter A?—Yes.

So that they would not be in chronological order except in regard to the other vessels beginning with A?—Beginning with A.

You could not put the ships in chronological order without rearranging them?—Yes.

If you want to look at the 'Osprey' you must look under O?—Yes.

One general question. During the time you were at New York did you make every enquiry at every place you could get a trace of an 'Osprey' during the years 1853 and 1854?—Yes.

The LORD CHIEF JUSTICE: You say you inquired of KINBERG?—Yes.

Why is he not a Witness?—Because I inquired if he knew anything of the Misses KINBERG LUIE said he left his child with. That is the only connection the name came in.

How long were you at Staten Island?—An hour.

I mean you were there independently of the fact of the vessel coming in that way?—Yes; I went there specially.

Now, do ships load at Staten Island?—No, my lord; but there is a Witness on that subject specially.

You went there. Did you see any?—I saw no vessels loading, and no signs whatever that ships were loading.

No quays or wharves where ships would be laden?—There is near that a Government wharf for government purposes.

I am speaking of ships?—There is no private wharf of any sort.

And how far do you say it is from New York?—About six miles from quarantine.

And vessels going out load at New York itself?—Or Brooklyn. Up the North River, the East River, and Jersey city there are wharves without end. I never saw a place so full.

But Staten Island not?—Staten Island not.

Dr. KENEALY: The Witness LUIE did not pretend that there was any wharf at Staten Island, but said they loaded from lighters. That is my own recollection.

Mr. Serjeant PARRY: The next Witness is from Staten Island, my lord.

The LORD CHIEF JUSTICE: Where did you say LUIE said he loaded from lighters?

Dr. KENEALY: I have asked my friend Mr. MCMAHON to find the reference; and I believe there is no doubt at all it will be found to be so.

The LORD CHIEF JUSTICE: Only I should like to see it while it is in one's mind. It was said it was by lighters I know.

Mr. Serjeant PARRY: I think we had it on the plan or map, and asked him to point out the spot where the 'Osprey' lay whilst being loaded by lighters.

Mr. HAWKINS: If your lordship will look at page 235 (Vol. VI.) you will find it. "How far from the shore did she lay?—About two hundred yards. How was the cargo brought off?—In lighters."

The LORD CHIEF JUSTICE: That is, brought off from the shore?

Mr. HAWKINS: Yes. It is in answer to a question from your lordship, Then you will see before that: "Mr. Justice MELLOR: Can you give any precise description of the place where the vessel lay when she took in cargo?—Yes, about 100 yards from shore. Slips or docks?—No, she was lying at anchor in the road; no docks there. Nor slips?—No. The LORD CHIEF JUSTICE: How far from shore did she lay?—About 200 yards. How was the cargo brought off?—In lighters." And again at page 198 (Vol. VI.) I ask: "All your cargo was put on board there?—Yes, we took it in lighters. All of it was there?—Yes."

PAUL CORNELL, sworn.

Examined by Mr. Serjeant PARRY.

I believe you have resided for the last thirty years in Staten Island, New York?—Yes.

What is your calling now?—One of the Health Officers' bargemen.

How long have you been in that occupation?—Thirty years the 1st last April. I was there five years and six months——

How long from now have you been in the Health Officers' barge?—I am in their employment at the present time.

And how long have you been in their employment?—Four years.

You say you have been in Staten Island for thirty years?—Yes.

With any exception?—I was away twenty-one months in 1851 and 1852.

With that exception, you have been residing there the last thirty years?—In the Health Officer's Department and in the Revenue Department, as bargeman.

Were you employed on board a Custom-House boat at Staten Island?—Yes.

Will you give us the date when you were first employed on board that boat, and how long you were employed?—In July, 1853 until July, 1861—eight years.

Was there at Staten Island a Custom-House Station?—Yes, a landing station to load all vessels from foreign parts coming to the port of New York.

It was not a Custom-House Office where vessels were cleared?—No, the vessels were boarded, and the crew's manifest was sent from Staten Island to New York in a ferry boat, put into a box and locked, and the messenger would take them out and take them to the Custom House.

During this time you say you were on board a Custom-House boat, was it the duty of that boat to board all vessels that came in through the Narrows to New York?—Yes, all vessels from foreign parts. Coastwise vessels they had nothing to do with.

Was any book kept giving the names of the vessels that you boarded?—Yes.

It is here, I think, is it not?—The boarding book? Yes.

Is that the book (handing it)?—Yes, it is the book.

Did you from time to time see that book yourself, and the entries that were made in it?—Yes.

SIR ROGER TICHBORNE, 1873.

From 1835 down to 1861?—Yes, and here are the initials of the officers' names who boarded those vessels.

In the book, towards the end of 1853 or in 1854, is there the name of the 'Osprey,' a Norwegian vessel?—No.

Mr. Justice LUSH: In neither of those years?

Mr. Serjeant PARRY: Neither of the years 1853 or 1854. I do not know whether that applies to the whole of the book. Is the 'Osprey' to be found in the whole of the book, or did you search the years 1853 and 1854?—I looked at 1853 and 1854 when the vessel would go to be visited.

I speak of a Norwegian 'Osprey.' Is there any entry of any 'Osprey' in either of those years?—I do not remember any vessel of that name.

I am speaking of the entries in the book?—No.

Your duty being to board vessels as you have told us, in 1853 and 1854 did you ever hear of an 'Osprey' arriving?—No.

The LORD CHIEF JUSTICE: Does the boarding by the officers of any vessel coming through the Narrows which is foreign, apply to vessels leaving which are foreign; do they board again?—No they clear at the Customs, and go their way from New York direct. They anchor at quarantine in the summer season, not in the winter on account of the ice.

Mr. Serjeant PARRY: Have you ever known of a vessel loading at Staten Island?—No. I have known a vessel, when there has been fever, to be subject to 30 days' quarantine.

I will come to that. An Admiralty vessel not with any particularity about it you have never known loaded at Staten Island?—No.

During the months of January and February what do you say?—You have the discharge of the ice from the three rivers, the North River, the East River, the Keels, and Jersey Flats, at ebb tide, when you have a ten mile bay where the ice comes in there, and the Narrows is one mile across, and abreast the quarantine it is three miles across, and when it comes out of the

Keels, and off the City Flats, and right down the river where the vessel is lying at anchor, it would cut her in pieces.

Mr. Justice LUSH: Does it discharge as early as January?—Yes.

Mr. Serjeant PARRY: How long does it continue?—To early in April. I have seen ice lay on the beach, where it is piled up high, until May.

The LORD CHIEF JUSTICE: As I understand you, the discharge of ice from those rivers is such that a vessel could not lay at anchor with safety?—No.

Off the Narrows there?—The ice would cut her in two if there came a north-east blow or south-east blow; it would be probably 6 or 8 feet of loose ice.

Mr. Serjeant PARRY: You were going to say in the case of vessels in quarantine lighters were used at times.—There was at all times years ago.

What do you remember about that?—Vessels at all times coming with passengers to New York port were in quarantine 48 hours.

The LORD CHIEF JUSTICE: That is vessels coming in?—Vessels coming in.

Mr. Serjeant PARRY: Were in quarantine 48 hours?—Yes.

Do you remember the yellow fever raging in Mexico?—Yes.

Do you remember vessels arriving from Mexico during that period?—Yes, it was in 1848.

What happened with reference to these vessels; was their cargo discharged in lighters?—It was discharged in lighters.

The LORD CHIEF JUSTICE: We have no interest in 1848, have we?

Mr. Serjeant PARRY: We have none.

The LORD CHIEF JUSTICE: Then why should we go into 1848?

Mr. Serjeant PARRY: He said something about yellow fever, and I only wanted to get out what it was.

The LORD CHIEF JUSTICE: What we are interested about is 1853 and 1854; were vessels ever loaded by lighters bringing down cargo to this spot?—No, never winter time; yes, summer time.

Mr. Serjeant PARRY: Do you remember what sort of lighters existed in the year 1854?—Brooklyn lighters; mostly all open lighters,

Were any deck lighters used in 1854?—Very few; all open lighters.

Of course, that would have made it more dangerous still in using lighters of that class?—Yes; no owner of a vessel would allow a lighter to come there in that season of the year; it would get filled with ice, and the ice would sink them—run over them.

I understand you to say that you have never known vessels loaded by lighters there?—No, I have known a vessel subject to thirty days quarantine; the Health Officers would take them a clearance ticket, and in all probability a cargo in the summer season of ballast, to go down to the West Indies again instead of loading thirty days' quarantine.

When have you known that?—Thirty or thirty-five years ago.

The LORD CHIEF JUSTICE: Have you ever known a vessel to take a regular export cargo by lighters?—No.

Mr. Justice MELLOR: You have never known such a thing?—No; I have known our best ships lay a week in January or February for a chance of getting to sea, on account of the ice, and they would have to go either to the north river or the east river to take cargo in; the ice would sink them.

Cross-examined by Dr. KENEALY.

Do you say you were Custom-House Officer in 1854?—No. Custom-House Bargeman, to row the officers on board the vessels that came into the port of New York.

What were you employed as?—Bargeman.

By whom?—The Custom-House Authorities; the collector of the port.

Of what port?—Collector of Customs.

Was your appointment in writing?—No.

Do not bargemen receive their appointments in writing?—No.

They do not?—There might be a list of the boat's crew sent down to the station.

Did you get an appointment in writing from the officer who employs you?—Well, a list of names sent down to the boat's crew when appointed.

Sent down to whom?—The head boarding officer.

I want to know, did you ever have any appointment in writing of the employment you followed?—No more than a list of names was sent down of the crew.

Did you have that list?—I did not have it; the boarding officer, Mr. RICHARD LOCKE, had it. I was not a sworn officer; bargemen are not sworn officers.

Do the sworn officers have their appointments in writing?—They do.

Who else was an officer with you at that time?—The boat's crew, M'GEE, and M'CLAN, and DECKER.

All dead but you?—No.

Was there any officer aboard the boat?—RICHARD ADAM LOCKE.

Where is he now?—He is in the graveyard, I suppose; he is dead.

Was he the officer in 1854?—Yes,

How long did he continue chief officer?—Eight years.

From 1854 down?—1853 he was appointed.

To when?—To 1861.

Was there anybody else in command of you except him?—There were two boarding officers, and Mr. LOCKE was the head: two under him.

Where were the boarding officers?—They lived on Staten Island.

What were their names?—WILLIAM SEEDON NICE.

What was the name of the other?—DEEKER.

The names of the two officers are in that book?—The initials of the names.

I see only "W. D.," the initials; the names are not here?—No, all the initials, and the names of the vessels they boarded.

They board, as I understand you, only foreign vessels?—All vessels from foreign ports.

The LORD CHIEF JUSTICE: That would include an American vessel if coming from a foreign port?—Yes.

Dr. KENEALY: But American vessels coming from American ports would not be boarded?—They would be boarded by the doctor, but not by the Custom-House officers, because all these vessels would be boarded by the health officer coming into port. They have the stations together; the Revenue station and the health officer's station.

Was there a board or anything up in 1854 to indicate where the quarantine station was?—Yes, it is enclosed by a brick wall.

But I mean was there anything to indicate to ships coming in?—Yes, a flagstaff with a yellow flag.

That indicated where the quarantine station was?—Yes.

And was it when they came abreast of the quarantine station that they were boarded?—They would come there to anchor.

They came abreast of the quarantine station and were anchored and then were boarded?—Yes, there were three buoys to form their anchorage ground.

But until they came abreast and were anchored they were not boarded?—They were boarded when they came there to anchor.

But not until then?—No.

So long as they were outside of that, they were as if they were in the open sea?—No, it was in the harbour; the ground was crowded with vessels.

But you had no right to board them until they came abreast of the quarantine board?—Not until they came to anchor.

Abreast of the quarantine board?—Yes, that is the anchorage ground.

The LORD CHIEF JUSTICE: But all were obliged to stop at the quarantine?—Yes, for the health officers.

And then when they anchored the health officer and you boarded?—Yes.

Dr. KENEALY: Abreast of the quarantine station?—The Custom-House Officer would go on board if the doctor was busy with other vessels; it did not make any difference which boarded first.

Now, can you give an idea of how many vessels would be lying at anchor abreast of the quarantine board?—I have known 160 or 170 to be at anchor there at once.

The LORD CHIEF JUSTICE: During quarantine, you mean?—Yes; they had to let them anchor where they pleased in the bay, they came in so thick, on a kind of south-east wind.

Vessels coming in?—Yes, vessels going out had no privilege to anchor there.

Vessels going out had no privilege to anchor off that place?—No.

Dr. KENEALY: Until they came abreast you had no jurisdiction over them?—No.

I suppose you do not remember the names of all the ships you went on board of?—No.

About how many would they go on board of in a day on an average in 1854?—A great many emigration would come in those days. Probably a dozen or fifteen, or twenty vessels from Europe.

At that time they would have to board every day?—Yes.

And then I suppose when they found them all right they would pass them?—Yes.

Can you tell me whether at that time there were any export duties from New York?—No.

There were not?

The LORD CHIEF JUSTICE: It is ambiguous. Do you know?

Dr. KENEALY: Were there any export duties then on American goods?—Only inward bound.

The LORD CHIEF JUSTICE: But outward bound?—No, not to my recollection. I never heard at all of such a thing.

Dr. KENEALY: This is since the war. I believe there have been export duties?—Not to my recollection.

Then there have never been export duties on American goods?—I never heard so, only inward bound.

Have you a distinct recollection you were at Staten Island in the beginning of 1854?—I was in the Custom-House barge in 1854.

What months in 1854?—July, 1853, to July, 1861.

Without any intermission?—Well, two days on duty and one off.

You have been asked something about lighters, and there are a great many, are there not, at Brooklyn?—Yes.

And were in 1854?—Yes,

How far is Brooklyn from Staten Island?—Six-and-a-half miles—seven-and-a-half across the river, six-and-a-half from Staten Island to Whitehall.

Brooklyn is noted for its lighters?—Yes, small open lighters, to carry pitch, resin, and turpentine; the principal cargo they carry for the tar houses—they belong to the Tar House Company.

Then do you mean to swear that those lighters never loaded ships at Staten Island?—I never saw one go to Staten Island to get any freight, or go with freight.

You never saw a lighter go down there to load a ship?—No.

Either from Brooklyn or New York?—Yes.

Never?—Never.

Mr. Justice MELLOR: As I understand, you never saw a ship lying at Staten Island for the purpose of being loaded?—No; never saw one.

The LORD CHIEF JUSTICE: Or being loaded from lighters from Brooklyn or any other place?—No. All our vessels go to sea from New York.

Not Staten Island?—No, I never knew an outward-bound vessel to take in a cargo to go to sea there.

Dr. KENEALY: Is that in consequence of the ice?—Yes.

The LORD CHIEF JUSTICE: That would not apply to summer, I suppose?—I never saw any vessels load there in summer time either—neither summer nor winter.

Dr. KENEALY: The ice prevents it in winter, and what in summer?—If sent down in lighters it would cost as much as the freight would be outward bound—the expenses of getting it out—and in winter time you might lay a week without getting a cargo out in a lighter, if one did come.

Then the ice prevents it in the winter, and in the summer it would be the same expense, as I understand, as to go up to New York?—It would be no expense at all, perhaps, to go up. If you took a vessel up, all you would have to pay is the dockage to get the vessel on to the pier-head.

I want to know what there is to prevent the captain of a ship loading with lighters?—On account of the expense.

Is the expense then of getting things on board by lighters equal to the expenses of being tugged up to New York and lying there?—It would probably cost you a tenth part of the expense.

Then it would be cheaper, you say, to go to New York, than to get it by lighters?—Yes, to load right off the pier. The lighters come alongside of you there, and take the cargo out.

What would be the harbour dues for a vessel of 400 tons going up to New York, through the Narrows?—About ten dollars to tow her up.

Does she pay no Custom-House dues?—He has to pay his Custom-House fees.

The LORD CHIEF JUSTICE: Either way, has he?—Inward-bound. Outward-bound do not pay.

Dr. KENEALY: Inward-bound vessels have to pay for being towed up to the Customs office?—Yes.

And dock dues?—Dock dues. I do not know what.

And any other dues?—Not that I know of.

And you say these would be less expensive than having the freight brought down to them by lighters?—Yes.

The LORD CHIEF JUSTICE: I understand you to say there would be a very great disproportion?—It would not cost one-tenth to go on to New York and take in cargo there at the pier-head.

Mr. Justice LUSH: The Custom-House dues must be paid whether they go up or not?—Yes, the Custom-House dues.

Dr. KENEALY: Supposing the vessel comes into Staten Island?—She has to be boarded and entered at the Custom House.

Supposing she chose to discharge her cargo there would she have to pay Customs dues all the same?—The same as if she went to New York.

I thought you told me they had no jurisdiction over her until she came up to the quarantine board?—When she comes into the waters of New York.

That is past the quarantine?—No, the waters run by Sandy Hook.

The New York waters run from Sandy Hook?—Yes; that is seventeen miles from New York.

Do you mean to say if I meant to anchor my ship south of Staten Island I have nothing at all to do with the Customs? Now be careful what you say. Do you mean to say that the Custom House has jurisdiction over me if I anchor south of Staten Island?—Yes.

Do you swear that?—Yes.

The LORD CHIEF JUSTICE: Supposing a vessel to come in through the Narrows and then to be where this vessel was represented to be loaded.

Dr. KENEALY: Yes; I am out of the jurisdiction there—on the open sea.

The LORD CHIEF JUSTICE: Do you mean that you could discharge there?

Dr. KENEALY: Yes, outside of that quarantine line I am in the open sea.

The LORD CHIEF JUSTICE: I am supposing you could come through the Narrows, and lay inside Staten Island.

Dr. KENEALY: I may go there as long as I do not pass the quarantine board. He himself says they have no jurisdiction.

The LORD CHIEF JUSTICE: But they pass the quarantine board before.

Dr. KENEALY: The vessel is my private house until I come to the quarantine board.

The LORD CHIEF JUSTICE: Yes; but you cannot discharge until you do. My question is, supposing a vessel discharge her cargo inside Staten Island, would she equally have to pay dues as if she went to New York?

Dr. KENEALY: No; if I take a ship in ballast there into these Narrows, and lie south of that quarantine, I am exempted from the Customs.

The LORD CHIEF JUSTICE: If you go in ballast, I do not know, because you may have no duties to pay.

Dr. KENEALY: The 'Osprey,' I assume, was in ballast: and I say that, if I lay south of that quarantine board, there is no jurisdiction.

The LORD CHIEF JUSTICE: Ask the Witness is that so. How is that?—If a vessel comes in ballast, she has to go and enter the same as if she had cargo.

Dr. KENEALY: If she passes the quarantine board, or comes inside the Narrows?—The Narrows and the Lower Bay. Sometimes there is a quarantine of three miles.

Do you mean to swear any officer can board ships until they come abreast of the quarantine board?—Yes.

I must ask you to be careful?—Yes.

What officer comes?—The Revenue Officer; the Health Officer.

Do not you know that the Revenue Officer never comes on board any ship until after the Quarantine Officer has been. I must ask you to consider?—I do consider.

Do not you know that no Custom-House Officer comes until after the Quarantine Officer has been?—They board vessels sixteen miles down from Whitehall—seven or eight miles from the lower quarantine.

Who does?—The doctor and the Revenue Board Officer. All vessels from the West Indies; sickly ports.

Show me where on the chart?—There is a hospital ship anchored there.

Show me any quarantine or anything on the chart until you come up to Staten Island?—There are two of them here; they are taken away now.

So there may be; they have nothing to do with the quarantine. There are hospitals in the Thames. Show me any place where you say there is a quarantine station or office on that chart except the one marked at Staten Island. Can you see Staten Island there?—Yes.

Do you understand a chart?—Yes.

I am glad you do. You are going very far away from Staten Island. You see the quarantine near that pencil mark?—Yes.

You see that pencil mark is outside the quarantine.

The LORD CHIEF JUSTICE: I want to see, because I rather think it is inside.

Dr. KENEALY: No, my lord, it is outside, that is the reason why I wanted to have it marked in ink when the man was marking it, so that there might be no mistake about it.

Mr. Justice LUSH: It is within the Narrows, but before you get to the quarantine.

Dr. KENEALY: Yes.

Mr. Justice LUSH: I do not know how far the quarantine ground extends.

The LORD CHIEF JUSTICE: When you say "inside" and "outside" I understand that to be said with reference to the open sea.

Dr. KENEALY: No, with reference to the quarantine. The port of New York has no jurisdiction until they come abreast of the quarantine. It is my private house until I get there, and no man dare enter it.

The LORD CHIEF JUSTICE: I do not know that.

Mr. Justice LUSH: I rather think you are mistaken; the spot where the mark "quarantine" is on the map does not indicate the extent of the quarantine ground.

Dr. KENEALY: That is what LUIE meant when he marked it there.

The LORD CHIEF JUSTICE: You must not tell us what the Witness meant.

Dr. KENEALY: We must take it that is the quarantine ground that he marked.

The LORD CHIEF JUSTICE: No, he marked where the ship lay.

Dr. KENEALY: But Mr. Justice LUSH says the ground may extend ouside that.

Mr. Justice LUSH: You must not assume it is confined to where the word marked on the map is.

Dr. KENEALY: I think I must assume that.

The LORD CHIEF JUSTICE: The Witness says sometimes 150 vessels were lying there.

Dr. KENEALY: Abreast of it, my Lord.

The LORD CHIEF JUSTICE: How far does the quarantine ground extend where the vessels lie?—They can send them south of the Sandy Hook to the Keels.

Who?—The Health Officer. He keeps a summer station for all vessels from sickly ports.

That depends on the Health Officer?—Yes, the Boarding Officer.

Dr. KENEALY: Your Lordship knows what is on the Thames, that large board—no ship is entitled to be boarded until it comes abreast of that board, and so I say it is there.

The LORD CHIEF JUSTICE: You assert it, but you have no evidence on that subject.

Dr. KENEALY: I want to get it from this Witness. Where will he venture to pledge his oath?

The LORD CHIEF JUSTICE: I do not think there is any occasion, where you have a Witness who has not the slightest intention of giving unfair answers, to put it in that stern way, whether he will venture to swear on his oath. It is offensive to a Witness, and there is no occasion for it.

Dr. KENEALY: It was done to nearly all my Witnesses, my lord

The LORD CHIEF JUSTICE: I think not.

Dr. KENEALY: The printed records of the Court show it, and my memory shows it.

The LORD CHIEF JUSTICE: I do not think you have a right to put it in that way. How far do you say the quarantine ground extends, the part where the ships may be directed by the Quarantine Officer to take up their station at quarantine?—Sandy Hook.

All the way?—Yes, they have two hospitals built now.

We are asking what there was in 1854—not now?—They could send them down to the Lower Bay then, vessels that had the yellow fever and bad diseases on board.

Mr. Justice LUSH: Then at what spot does the Officer first board?

Dr. KENEALY: He has no jurisdiction to board a ship, until he comes abreast of that.

Mr. Justice LUSH: At what spot has a Quarantine Officer a right to board a ship?—He can board at Sandy Hook when they come to the Hook.

Dr. KENEALY: Have you ever boarded a ship at Sandy Hook?—Yes.

When?—A couple of years ago, or last summer.

In 1854 had you any knowledge of Sandy Hook?—No, not in 1854.

The LORD CHIEF JUSTICE: Were you in the Customs boat at that time?—In 1854, the revenue boat. The revenue vessels would board any vessels then going inside the Narrows from foreign parts.

Did you know where the quarantine vessels boarded in 1854?—They could board inside the Narrows too, the Custom-House Officers and Health Officers if they wished.

Dr. KENEALY: Were there any Customs, or anything at Sandy Hook in 1854?—No.

Dr. KENEALY: Sandy Hook is like the Nore, my lord, a mere name.

The LORD CHIEF JUSTICE: Perfectly true; but it does not follow that, because the vessel was lying, according to LUIE'S account, their jurisdiction did not apply to all the places between the Narrows.

Dr. KENEALY: I should like to hear, because I am told they cannot have any such evidence; if they can give any such evidence now, I shall be glad to hear it, and I challenge them to give it.

The LORD CHIEF JUSTICE: All we have at present is, that they board vessels as soon as they come into the Narrows.

Dr. KENEALY: As soon as they get abreast of the Quarantine.

The LORD CHIEF JUSTICE: No, he says last year he boarded the vessel at Sandy Hook.

The WITNESS: There are two hospital ships which are taken down in the month of May.

A JURYMAN: As I understand, the Quarantine is a point beyond which you cannot go without being boarded?

The LORD CHIEF JUSTICE: I should suppose so.

The JURYMAN: It does not follow that they cannot board until you get there.

Dr. KENEALY: At all events, I shall challenge them to give proof, because I shall ask permission to call Witnesses engaged in the American trade to state that that is a mistake.

The LORD CHIEF JUSTICE: I think that should have been done before.

Mr. Justice LUSH: Where do you say the Revenue Officer has a right to board?—The cutter's folks can board three leagues from the land.

What land?—The bar of Sandy Hook.

Dr. KENEALY: Was that so in 1854, are you prepared to say?—Yes.

Did you ever do it in 1854?—I have known it to be done, and because a ship would not heave-to, turn to and fire a shot or two to make her heave-to.

That is all you have heard?—Yes.

Mr. Justice LUSH: How can smuggling be prevented if it be limited in the way you suggest?

Dr. KENEALY: Well, my lord has heard what I have said, and the Crown, what I have said on that matter.

Mr. Justice MELLOR: I want to know as a matter of fact, whether I thoroughly understand that whatever the cost might be, you never knew of a vessel about 400 tons, outward bound, loaded from Staten Island, either by lighters from Staten Island, New York, or Brooklyn, or anywhere else?—No, I never knew one.

In the whole course of your experience?—Yes, the last thirty years, except twenty-one months, when I was away from the Island.

The LORD CHIEF JUSTICE: Did I understand you that during the early part of the year, between January and April, the lighters could not do it by reason of the ice, and no vessel could anchor there?—If her anchors and chains were strong enough to hold her the drift ice would cut her in two.

And the lighters would be exposed in the same way?—Yes, and the owner of the lighter would not run the risk of his lighter coming there, because they have no docks there for vessels to go to make fast.

[Adjourned for half-an-hour.]

Re-examined by Mr. HAWKINS.

There was, as I understand you, a Custom House Station, although not a Custom House in Staten Island?—A Custom House Station. What they call a boarding Station.

Is that where the lighthouse station is now?—That is where the lighthouse station is now. There were storehouses built to put goods in.

One question about this book. Is this the only book that was kept for the vessels that were boarded?—No, there were books for seventy years back.

This was one book in which every vessel that was boarded was entered?—No, I guess not.

One of these?—They would fill one book up and take another one.

One book at a time?—They abolished their office some seven years ago.

There was one book kept in which the Officers or somebody entered every vessel that was boarded?—Yes, entered in the book.

This was the book kept for 1853 and 1854?—Yes.

Did you from day to day and from time to time see the book?—When I have taken the papers out, the crew's list and the manifest, I have stood till the Officer made up his reports and and sealed them up and put them on board the ferry boat to send to New York.

Is this the book that was left in the station when it was turned into the lighthouse station?—When they abolished the station they put all the books in the lighthouse station in the company's house.

You yourself being in the Officer of Health's boat were unwilling to come to England?

Dr. KENEALY: I asked him nothing about that. If I had asked him about his payment, that might arise, but how can that arise?

Mr. Justice MELLOR: He is here, and you must assume he will not be influenced by one motive or another. Dr. KENEALY might have asked him about that.

Mr. HAWKINS: I only put it in consequence of the way he was examined, that he was no willing Witness. He was not desirous to come here.

Dr. KENEALY: You have no right to state that. That is giving evidence to the jury about this Witness's mind.

Mr. Justice LUSH: Nothing was asked about that.

Examined by the COURT.

The LORD CHIEF JUSTICE: Do I understand you that there is a station called the quarantine station, and a house where the Quarantine Officer lives. Is that so?—Yes, the head Boarding Officer had a house to live in, and the office was united to the quarantine wall.

How far outwards towards the sea does the anchoring ground extend for quarantine vessels?—The Health Officers can order them to Sandy Hook—anywhere they please, anywhere inside Sandy Hook—for safety.

Suppose any vessel came and anchored from the neighbourhood, where the quarantine station is. Could they be interfered with at all?—No.

They have a right to come and anchor there, and the Quarantine Officers would not be able to send them away?—The Health Officer could send them in the lower bay.

That is for health purposes?—Yes.

Not for purposes of the port?—Yes, the Health Officer could send them down for the safety and welfare of the inhabitants from yellow fever.

Mr. Justice LUSH: Suppose a vessel were to anchor there for the purpose of taking in her outward cargo, would that be allowed?—It would be allowed, but it is a thing I never see done.

Staten Island is within what Customs district?—They call it the Port of New York, six and a half miles from New York.

The LORD CHIEF JUSTICE: For Custom-House purposes it is within the Custom-House jurisdiction of New York?—Yes.

A JUROR: In 1854 what was the produce of Staten Island?—It was a farm district.

The LORD CHIEF JUSTICE: Agricultural?—Yes.

Mr. FRANCIS FREDERICK KRUSE, sworn.

Examined by Mr. HAWKINS.

Do you live in New York?—No.

Where do you live?—In Hoboken.

Is that near New York?—Yes, between Hudson River, New York, and Hoboken.

Are you a stevedore?—Yes.

Do you carry on the business that was some time ago carried on by Mr. THOMPSON?—I do.

The LORD CHIEF JUSTICE: Did you succeed to his business?—I did.

Mr. HAWKINS: I believe you went into Mr. THOMPSON'S service yourself in the year 1843, or thereabouts?—Yes, earlier.

Have you remained in the same business with Mr. THOMPSON,

and his successors, and now on your own account ever since?—No; I have been away three or four times for short voyages for three months.

What is your place of business—what is the address?—Discharging ships and loading them again.

What is the address of your office?—17, West Street, New York.

Do you live at Castle Gardens?—No; near by. I do not live there. I have my business place there. I live in Hoboken.

Now, had Mr. THOMPSON two sons?—Yes.

Were they with him in his business in 1853 and 1854?—No; Mr. HOLDEN was in business with Mr. THOMPSON.

Will you tell me, now, first, what changes have there been in the firm since 1853?—Mr. THOMPSON was the first firm, and Mr. HOLDEN was foreman, and Mr. JOHN THOMPSON, jun., the son, was book-keeper; and I think Mr. THOMPSON resigned from business between 1844 and 1845—I do not exactly recollect.

The LORD CHIEF JUSTICE: Retired from business?—Yes.

Mr. Justice LUSH: 1844?

Mr. HAWKINS: You mean 1854.—Yes, 1854 or 1855.

And when he retired?—Then Mr. HOLDEN and Mr. JOHN THOMPSON, jun., went into partnership.

The LORD CHIEF JUSTICE: And took the business?—Yes.

Mr. HAWKINS: And you became foreman, I think?—I became their foreman.

How long did you continue foreman?—Till 1857.

Did Mr. JOHN THOMPSON then die?—Yes.

The LORD CHIEF JUSTICE: THOMPSON, junior?—Yes.

Mr. HAWKINS: And you became partner with Mr. HOLDEN?—Yes.

And you married Mr. HOLDEN's daughter?—I did.

Mr. HOLDEN himself is dead now?—Yes.

And you carry on the business alone?—Yes.

Old Mr. THOMPSON is dead, I believe?—Yes.

And the other son is dead, too?—Yes, both dead—JOHN and WILLIAM.

The two sons, and old Mr. THOMPSON, and Mr. HOLDEN, are all dead?—Yes.

Now, in the business, as carried on during the time that you have known it, was there a book kept for all vessels with which you did business—what you call a ledger?—Yes, a ledger.

For every ship you had?—Yes.

Is that the book for every ship which the firm had in the years 1853 and 1854 (a book was handed to Witness)?—Yes.

Have you carefully examined that book?—I have.

Is there any mention there of any vessel called the 'Osprey'?

Dr. KENEALY: My lord, I object to this. This is a private man's book, and it is not pretended, so far as I see, that a single entry was made by this Witness in that book.

Mr. HAWKINS: I will ask a question as to that. Did you see that book at the periods when it purports to have been kept?—I did. It was my purpose to take the names of the different vessels and give it to the book-keeper.

It was your duty to give the different particulars to the book-keeper?—Yes.

What did the book-keeper do?—Put them down in the book, and the names of the men that were employed in the vessel.

Have you seen the book-keeper yourself make those entries?—Yes.

Was that book, which you have now before you, the book in which those entries were made in the ordinary course of business in the years 1853 and 1854?—Yes.

Mr. Justice LUSH: Were they first entered in that book?

Mr. HAWKINS: Dictated by him. (To the Witness) You told the book-keeper, as I understand you?—I put the names on a slip of paper or book, and then gave it to the book-keeper.

Mr. Justice LUSH: What book did he first enter it in?—This book (pointing to the book).

Mr. Justice MELLOR: From the slips of paper?—From my slips of paper, or small book.

The LORD CHIEF JUSTICE: You saw the book from time to time, after the entries had been made?—Yes.

Mr. HAWKINS: You have told us you have carefully searched that book?—Yes.

Is there any entry at all?

Dr. KENEALY: I must object. This Witness does not profess, as I understand, to swear that he saw all the entries made in that book by this book-keeper.

The LORD CHIEF JUSTICE: He saw the book from time to time.

The WITNESS: I saw the book from time to time.

Dr. KENEALY: He says he saw the book from time to time; but I do not understand that means examining it. I do not understand him as swearing that he had ever examined the book for the purpose of seeing whether all the things he gave to the book-keeper were entered into it, for the purpose of testing its accuracy. Seeing the book from time to time does not indicate that.

The LORD CHIEF JUSTICE: He was the foreman; and had, in that way, the superintendence of the business. Part of the business is to make entries in this book of what is done, with reference to the different ships and the persons employed. (To the Witness) Was it your business to see that that book was properly kept?—It was not my business to see that book properly kept. It was my business to give the names of different ships.

What knowledge have you of the entries having been made, if any?—I have seen it, myself.

Seen what?—Seen the entry made.

You did not always see him make the entries?—Yes, pretty much all. All that I gave him of the different vessels.

Mr. HAWKINS: It being a book which is kept in the ordinary course of duty by a deceased person——

The LORD CHIEF JUSTICE: I do not think at present we have got the fact that the man who made the entries is deceased.

Mr. Justice LUSH: JOHN THOMPSON, the son, was the book-keeper?—Yes.

The LORD CHIEF JUSTICE: He is dead?—Yes.

Mr. Justice LUSH: Was it your duty to give the particulars of all the business that was done, or only that portion that came under your superintendence?—All.

Were you cognisant of all business done?—All the different vessels that were under our care.

Mr. Justice MELLOR: Under your care or charge that you had to do with?—Yes.

Mr. HAWKINS: That being so, you have gone through the book carefully during the whole of the two years?—Yes.

Was there any vessel at all loaded by the firm of THOMPSON during those two years—any 'Osprey'?—No.

Did you ever know of the firm of THOMPSON & Co. loading any 'Osprey' at all?—No, I never knew such a name.

Mr. Justice MELLOR: What were the two years you refer to?

Mr. HAWKINS: 1853 and 1854. (To the Witness) Did you know the name of BARNETT or BANNETT as captain of any vessel you loaded?—No, I do not remember.

Or any man named JEAN LUIE, to your knowledge?—No.

Did you know what is called the 'Scandinavian Hotel'?—Yes.

What was the house called the 'Scandinavian Hotel'? Was it a large hotel, or what?—You may term it an hotel, a resort of seamen especially, and water clerks—Swedes, and Norwegians, and all sorts of nationality.

Is Hoboken, where you live, a part of Jersey City?—It is not a part of it, it is just joining it.

Do you know of any such street as Caroline Street in Jersey City?—No, I lived there since 1848.

You never heard of such a street?—No.

Mr. Justice MELLOR: Is Jersey City the proper name of it?—Yes.

Do you call it Jersey City?—New Jersey is a state, Jersey City is a city.

Is it largely populated?—Pretty large population.

Are you familiar with the whole of Jersey City?—Not exactly Jersey City, but I am with Hoboken.

Mr. HAWKINS: You have known it since 1848?—I have known Jersey City since 1840.

Has it increased largely since then?—Yes, I have lived in Hoboken during 1848.

As far as you know, there is no such place?—No.

Cross-examined by Dr. KENEALY.

What was the object of the entries you made in these books or gave to the book-keeper? I have not seen the books. Let me see the sort of thing it is. (The book was handed to the learned Counsel.) I suppose they are all of the same class?—They are made by the man.

Did Mr. THOMPSON himself superintend the packing when the crew did the work?—Sometimes the crew did the work and sometimes the men from shore.

And Mr. THOMPSON superintended?—We employed men just as much as we wanted, and he superintended.

In that case there was no entry made in the book?—No, if he had no men employed the ship was entered, but not anything else.

The LORD CHIEF JUSTICE: The ships were entered?—The ships were entered as soon as we had them in charge: as soon as we had the privilege of attending to them.

Mr. Justice LUSH: In what book?—The ledger.

Dr. KENEALY: Can you show me any entries in the book where the ship only was entered, and Mr. THOMPSON entered directing the ship's crew?—I could not; there was no vessel but had, more or less, one or two, may be four, to assist to stow the cargo during the time she was in port.

Do you mean to swear that Mr. THOMPSON in 1854 never superintended the whole of the work done by the ship's crews?—I could not.

That is what you have been swearing?—I have not.

Mr. Justice LUSH: Not as far as he knew.

The WITNESS: I do not remember there was a ship left New York without more or less——

Dr. KENEALY: Are you going to swear that Mr. THOMPSON, in 1854, never superintended the packing of a ship when the whole of the work was done by the ship's crew?—I do not remember I ever did.

Are you going to swear he did not?—I could not; I never knew anyone without some assistance—it would not be satisfactory.

There is Mr. THOMPSON there and the men ready to do the work?—Mr. THOMPSON could not go down to the bottom of the ship to superintend without having a foreman there.

Who was the foreman?—A man employed from the shore.

A casual man?—In Mr. THOMPSON's employ.

Were you with him during all the year 1854?—Yes. I was with him ever since 1815.

Do you mean to say you have never known occasions when he had no men of his own to go on board ships?—I do not remember—not one.

May such a thing have happened without your knowing it?—The captain comes in and wants his vessel loaded; he wants a foreman or man who superintends the work, with the crew.

What is there to prevent the captain saying—Mr. THOMPSON, I want you to superintend the loading of my ship?—Mr. THOMPSON could not go down himself to superintend—he had to send the man to do that.

Why not; was he a cripple, or had he anything the matter with him?—No; he was what we term a "boss."

A "boss!" What on earth is that?—A master, if you please.

He was too great a man to go down in the ship?—It was not his duty to do so. Occasionally he would go down to see if the work was done right by the men he sent.

Did NEWHAM ever act as foreman?—I did.

Did NEWHAM act in 1854?—I did not become foreman till 1857.

What was the firm in 1854?—HOLDEN.

Do you remember when it was THOMPSON and NEWHAM?—NEWHOUSE; that was a brokerage firm; they were shipbrokers.

Not Stevedores?—No; that was WILLIAM THOMPSON and NEWHOUSE.

Mr. Justice LUSH: That was a different person?—A different firm; a brother of JOHN THOMPSON.

Dr. KENEALY: The foreman in 1850, as I understand, would be the person whose duty it was to make the returns to the book-keeper?—Yes.

In what year did you begin to make returns to the book-keeper?—I think in 1855; 1854 and 1855.

Did you make any in 1854?—I did.

What time in 1854 did you first begin to make returns?—I think in February.

Will you swear it?—To the best of my knowledge.

Was that Mr. HOLDEN the person whose duty it was to make the returns?—Mr. HOLDEN was the master and Mr. THOMPSON: they were the firm.

Was not Mr. HOLDEN acting as the foreman?—He was the foreman from 1854.

When did he become in the firm?—1854.

What time in 1854?—I do not remember exactly.

Was it in the spring?—I think very early in the spring or latter part of the winter.

Early in the spring he became the foreman?—Master.

Up to the time when he ceased to be foreman, was it his duty to make the returns to the book-keeper?—I became foreman then, and I did so.

Up to the time he became partner, was it not his duty to make the returns?—Yes.

You made none until he ceased to be foreman?—I used to do it occasionally, when he was absent.

The LORD CHIEF JUSTICE: Have you the book?

(It was handed to the Court.)

Dr. KENEALY: I understood he was the man who made the returns for the book in 1854. Now it turns out he did not do it at all till February. (To the Witness) Are you prepared at all to fix any date when you can say you first began to make returns to the book-keeper?—I think it was February; I could not exactly say; I do not remember.

It might have been March?—I do not remember.

The LORD CHIEF JUSTICE: Is the year marked here?—In the fore part of the book.

Mr. Justice LUSH: Who did the writing in it after Mr. HOLDEN became partner?—Mr. JOHN THOMPSON.

You can tell his writing?—Yes.

You can tell from the date when he began?—It is all Mr. THOMPSON's writing.

The whole of the book?—Except there may be a few vessels entered by the brother; when Mr. JOHN THOMPSON was absent the brother, WILLIAM THOMPSON, took his place.

The LORD CHIEF JUSTICE: Can you tell me where 1854 begins?—Yes.

Dr. KENEALY: Did you know THOMPSON and NEWHOUSE?—I did.

Were they brokers?—They were.

The LORD CHIEF JUSTICE: This is January 7th, 1814?—1853 and 1854, my lord.

Dr. KENEALY: Your firm were THOMPSON and HOLDEN, as I understand, in 1854?—Yes.

Did you ever know the firm of THOMPSON and NEWHOUSE?—That was another firm, shipbrokers,—a brother of Mr. JOHN THOMPSON, the Stevedore.

THOMPSON and NEWHOUSE were brokers?—Yes.

The Mr. THOMPSON of that firm was a brother of Mr. THOMPSON, the Stevedore?—Yes.

Where did THOMPSON and NEWHOUSE carry on their business?—In New York.

Where?—Close to the North River. I do not know exactly what street it was. I think it was in William Street, not very far off.

What is your exact address in New York?—47, West Street.

West Street? Near the North River?—Yes.

In 1854 did the brokers sometimes act as Stevedores?—No, never did.

What?—Never did act as Stevedores.

What?—No.

THOMPSON and NEWHOUSE?—They were not Stevedores.

Did they act as Stevedores?—No.

You say so?—I do.

How do you know?—I knew them personally.

You never knew them to act as Stevedores?—No.

Have you made any inquiry of them about this matter?—About which matter?

About this matter of the 'Osprey'?—By whom?

Have you made any inquiry of them about the 'Osprey'?—No, they are both dead. I could not make any inquiry.

Is the business carried on?—No, both of the firm are dead.

Is the business carried on?—The brokerage?

Yes?—I do not know whether it is kept on or not.

You have been asked some questions about the 'Scandinavian Hotel;'—did you know more than one 'Scandinavian Hotel'?—No, I only knew the one.

Where do you say that was?—It was kept in Greenwich Street by a man named ROBERTSON.

Was he called ROBERTSON, the Jew?—I do not know whether he was called the Jew. He was called ROBERTSON, that is all I know.

Did you never hear of another 'Scandinavian Hotel' kept by another man?—Not to my knowledge.

Could you give me an idea what was the population of New Jersey in 1854?—No, I could not.

I mean, was it counted by thousands?—Yes, I suppose four or five thousand at that time.

Mr. Serjeant PARRY: Do you mean state or city?—City.

Dr. KENEALY: And the population of Hoboken—what was that?—Very small, a very small village.

Look at him?—Which gentleman do you mean?

That one with the bald head and the beard (pointing to JEAN LUIE)?—I can look at him—Yes.

Look at him?—I do.

Did you ever see him in 1854?—I do not think I ever saw him in my life.

Used you to drive horses down to the pier in 1854?—I do not know the man.

The LORD CHIEF JUSTICE: Which pier?

Dr. KENEALY: Did you drive horses for the unloading of cargoes down to the pier in 1854?—No; I never drove no horse in my life.

Did you go with the horses that were unloading cargoes?—We had horses.

Did you go with them?—I never drove them.

Did you go with them?—What do you mean by going with them?

Do you mean to say you do not understand what I mean by going with the horses down to unload the cargoes?—We had horses.

Did you ever go down to the pier, whether you were driving or not?—When we wanted the horses we notified it to the stables.

Did you go down to the pier with the horses in 1854?—I might sometimes follow them; I do not remember. When I came from the stables——

Was it part of your business to go down to the pier with the horses?—No. My business was to notify to parties who drove the horses to come down at such a time.

Did you go down to the pier with the horses?—Sometimes I might. I do not remember.

You do not remember whether you did or not?—I do not remember: not follow them directly. I might go with them, follow them down to the same vessels where they were wanted.

Have you any recollection of having gone down to the pier in the early part of 1854 with the horses?—I do not remember it.

Examined by the Court.

The LORD CHIEF JUSTICE: I think you say you were foreman for some time in 1854?—Yes.

Can you fix the period or not?—In 1854?

Yes; when you became foreman?—I think it was in February.

Did JOHN THOMPSON become bookkeeper at the same time you became foreman?—He was bookkeeper long before I was there. He was bookkeeper for his father.

Now, whether you were foreman or not in February, you were in the employ of the firm?—I have been in the employ since 1810. I have been absent four or five times for small sea voyages.

In the month of January or February, 1854, did you know of any man belonging to the firm going down to Staten Island to load a vessel there?—Never knew such a thing.

If a man or men had gone to stow a cargo on board a vessel at Staten Island, you must have known it?—I must have known it, surely.

You did not know of any such thing?—Nothing of the kind.

Mr. Justice MELLOR: Did you ever know of a vessel loading at Staten Island?—Could not do it at that time of the year. The ice is too strong, and would cut a vessel in two. The ice

comes down from East River and North River, right down to Staten Island.

Mr. JOSEPH HERCULES DES ROSIERS, sworn.

Examined by Mr. Serjeant Parry.

Do you reside at Chicago in the United States?—I do.

What is your calling?—Detective.

Detective Police?—We are not called Detective Police, but Detectives.

Whatever you call yourselves; "Detective," do you call yourself?—Yes, belonging to the National Detective Agency.

How long have you been in that position at Chicago?—About two years.

How long have you lived at Chicago?—I have lived since 1866; although I was there several times before; but I resided there since 1866.

How long have you been at Chicago altogether?—Since 1857.

Gone there backwards and forwards?—Yes.

Now is there such a street in Chicago as Seventh Street, or Number Seventh Street?—Not to my knowledge.

Can you speak positively, because you would know if there was such a street, would you not?—Yes.

Were you directed, on the 4th of November last, to make some inquiries as to Seventh Street, and as to Newberry Avenue?—I was.

It is the name Jean Luie mentioned. Is there such a place as Newbury Avenue in Chicago?—There is.

Is there a No. 7, Newbury Avenue?—There is not.

Did you make inquiries at every house in Newbury Avenue as to any grog shop, or anything of that kind, kept by a person of the name of Jean Luie?—Yes.

Could you find such a place?—No, there is no such place known. I inquired of people there.

Did you find any shop of any kind, or place or store of any

JAMES FRANCIS DOUGHTY, SECOND SON OF SIR ROGER TICHBORNE.

kind, belonging to a person of the name of Jean Luie?—I did not.

Did you find the name of Jean Luie over any door in Newbury Avenue, or any shop, or any place?—I did not.

Besides looking yourself in the Avenue, and searching for this place, did you make inquiries of persons in the neighbourhood?—I did.

Did you inquire of a Mr. Taylor, who was a proprietor of property there?—Henry Goodwin.

Did he live at the corner of Taylor Street?—He has been a proprietor since twenty years.

Could you find anything out about Jean Luie from anybody?—I could not.

Is there a city hall at Chicago?—Yes.

Are there any maps or plans of the city there?—Yes.

Did you search at the city hall the plans or maps of the city?—I did.

Did you find any Seventh Street there?—I did not.

Dr. Kenealy: Surely maps we ought to have

Mr. Serjeant Parry: Is the city hall a public office in Chicago?—It is.

Who is the person in authority over it?—The city clerk.

Did you make an application to him for permission to bring over the records relating to the city and streets of the city?—I did.

Did he refuse?—Yes.

In this city hall are there official records of streets?—Yes.

Given as such by the officials?—Yes.

Did you search those official records?—I did.

Were you able to find a street called Seventh or No. Seventh Street?—No.

Mr. Justice Mellor: Did you know the person of the Witness Jean Luie, in Chicago?—I never knew him.

Mr. Serjeant Parry: I do not know whether among those

official records of streets the names of the occupiers of the houses or shops appear, or are they merely the names of the streets?—The names of the streets.

Mr. Justice LUSH: Was that a part of the city that was burnt? No, it was not.

Mr. Serjeant PARRY: After you had made these inquiries at Chicago, did you proceed to New York?—I did; I left Chicago on the 5th of November, and proceeded to New York, which I reached on the 7th, in the morning.

Did you make inquiries at Brooklyn, at Nineteenth Street?—I did.

It is a part of New York?—Yes, across the river.

Is there a Nineteenth Street at Brooklyn?—There is.

Now, did you make inquiries throughout the whole of that street for a person of the name of CARL ANDERSON?—I did.

And also for JEAN LUIE?—Yes.

Were you able to find either of those persons as living there?—No.

Or as having lived there?—No, I could find no one to give me information about them.

You did not find CARL ANDERSON?—I did not.

And you also say you did not find JEAN LUIE?—No.

Did you make any examination of the city records with reference to Nineteenth Street, Brooklyn?—I did.

For what purpose?—To satisfy myself there was but one Nineteenth Street in Brooklyn.

Did you find that to be so?—I did.

That was at the City Hall, Brooklyn?—Yes.

Did you go after that to Jersey City?—I did.

Did you inquire for a street called Caroline Street in Jersey City?—I did. I inquired at the Police and City Hall.

Was there any such street in Jersey City?—Not on the records.

You say you inquired at the City Hall, and you made a search of the city records of the streets of the city?—I did.

And you could find no Caroline Street?—No Caroline Street.

Did you inquire at any other place to find out Caroline Street?—I inquired at the City of Bergin and Hudson City.

A sort of suburb?—They are on three different maps.

Did you make those inquiries at the City of Bergin and Hudson City?—No, the records are kept at the same office in Jersey City.

Could you find any street called Caroline Street?—I could not.

Did you make similar inquiries at West Hoboken?—East Hoboken and West Hoboken.

Was there any Caroline Street you could find there?—None on record.

Are all those places in the City of New Jersey?—Yes.

Did you also inquire of JEAN LUIE as well?—Not in Jersey City.

Did you afterwards go to Buffalo City?—I did; I left New York on Saturday.

How is that situate with regard to Lake Michigan?—Lake Erie; Buffalo is a port of entry on the lake.

Did you ever make inquiry with reference to a steamer called the 'Ironsides,' plying on the lake?—I did. I went to the United States' Custom House and interviewed Mr. DANIELS, the United States' Revenue Collector.

Did you search at the Custom House?—I did.

For this steamship called the 'Ironsides'?—I made a search of the register.

Is there a regular register of all the steamers that ply on the lake kept at Buffalo?—All steamers that enter and call at Buffalo.

Did you apply for permission to bring those records here, or such as you required?—I did, from Mr. DANIELS.

For the purpose of this Trial?—Yes.

And you were refused?—Yes.

Dr. KENEALY: There was no cross-examination on this matter. I do not like to want to appear to shut out anything at all in this case. There really was no cross-examination about this 'Ironsides.'

Mr. Serjeant PARRY: It was on cross-examination this was elicited.

The LORD CHIEF JUSTICE: When that was stated you could not further inquire into it.

Mr. Serjeant PARRY: It was done by my friend Mr. HAWKINS with a particular and precise object, in order to follow JEAN LUIE, and to see his career.

Dr. KENEALY: What I was submitting in answer to your Lordship's objection——

The LORD CHIEF JUSTICE: Not my objection.

Dr. KENEALY: In answer to what your lordship says, how could they know about it. I am submitting the proper course to adopt was this. As soon as they got information from their Witnesses they ought to have had JEAN LUIE brought into the box, and cross-examined him on the facts in fairness to the man himself.

The LORD CHIEF JUSTICE: He has given an account of himself, and, as I understand, referred to different places and different vessels.

Dr. KENEALY: I am now on the 'Ironsides.'

The LORD CHIEF JUSTICE: Take that as an instance; they cannot tell whether it is true that he ever served on board a vessel called the 'Ironsides,' until they have made inquiries. They are not called on to cross-examine him further. They say, "Where did you serve?" He mentions among other ships a steamer called the 'Ironsides.' Then the matter drops until they are in a position to show (if they can show it), that he never did serve on the 'Ironsides,' because they say there was no 'Ironsides.'

Dr. KENEALY: What I am submitting is, before this matter is being tried, I will not say on a collateral issue, but as affecting the Witness, that, in fairness to the Witness, he ought to have been recalled and cross-examined.

The LORD CHIEF JUSTICE: What could they have asked him more than he has stated before?—He said, "I served at a given period on board a given vessel at a given place. What more can you ask? Then they propose to show that statement is untrue. They propose to contradict it. What more could they ask him if they put him in the box?

Dr. KENEALY: What was said before was hardly in the nature of an adverse cross-examination. It was simply to elicit certain information from him.

The LORD CHIEF JUSTICE: That is, information with reference to himself. A man is asked, Where were you at a given period? I was at such a place. You need not go any further. It is competent to you to prove he was not there.

Dr. KENEALY: I called your lordship's attention to it, as I thought I was bound to do.

The LORD CHIEF JUSTICE: I do not see what they could further have asked him if they had put him in the box.

Dr. KENEALY: Details about the 'Ironsides,' which are shut out from the Jury.

The LORD CHIEF JUSTICE: What details could he give?

Dr. KENEALY: The captain's name, and furnish particulars about her, if the matter were put to him as a matter of cross-examination.

The LORD CHIEF JUSTICE: You might have done that on re-examination, inasmuch as they had elicited on cross-examination he was on board a vessel called the 'Ironsides.' It would be fully open to you on re-examination to get at these details.

Dr. KENEALY: I certainly should have done so if I had known there was to be an adjournment for three weeks to bring rebutting evidence, not knowing that it seemed irrelevant to take your lordships' and the Court's time.

Mr. Justice MELLOR: They can only call Witnesses in reply to contradict what he said. They are, it seems to me, doing that—that is, proposing to do that.

Mr. Justice LUSH: LUIE fixes the date in 1871.

Mr. Serjeant PARRY: Did you search the register of these steamers?—I did.

By permission of Mr. DANIELS?—Yes.

Could you find any steamer called the 'Ironsides' trading upon the lake or steaming upon the lake in 1871?—None.

Did you find a steamer named the 'Ironsides' of any date?—I did.

What was she?—She was a propeller.

What was the date she was entered?—On 1st May, 1868, she entered the port of Chicago from Milwaukee.

And where to?—Cleared on the 6th for Chicago.

Did she trade or ply upon the lake?

The LORD CHIEF JUSTICE: What do you say about this vessel in 1868?—She is registered as entering the port of Buffalo on 1st May, 1868, from Milwaukee, and cleared on the 6th.

A JUROR: Is what you call a propeller the same as a tug ship?—It is a large steam vessel on the lake.

The LORD CHIEF JUSTICE: Is that a steamer for towing other ships?—No. Our largest vessel on the lake.

Mr. Serjeant PARRY: Is it what we call a screw steamer?—Yes.

That steamer had not been in Buffalo before or since?—Before I cannot say.

But since?—Since she has not. Not registered there.

Did you inquire after a Lake Erie Steamboat Company?—I did.

Could you find out that such a company had ever been in existence?—I could find no such company in existence.

Did you make the fullest inquiries that you could with reference to it?—I inquired of different officers and offices, at the Western Union Transportation Company, a steamboat union transportation company; they told me they never heard of such a company in existence.

I perhaps ought to have asked you this before; while in New York did you inquire after "Harry the sailmaker," living in William Street?—I did.

Could you find such a person?—Not in William Street.

Whom do you say you found?—I found one "HARRY the sailmaker" in South Street.

What was his real name?—He gave me his name as ANTOINE NETREAU.

"HARRY the sailmaker" was a nickname?—That is what he told me.

You have brought here, have you not, a Chicago directory, and also a map of the city?—Yes.

The LORD CHIEF JUSTICE: When you say HARRY, and his name was ANTOINE NETREAU, why did you call him HARRY?—I made inquiries for a man called "HARRY the sailmaker;" no one seemed to know any other name that he went by.

Did he go by that name; was that name over his shop?—No, he was a hired worker working for Mr. TRONS.

Mr. Serjeant PARRY: Did you inquire from this HARRY whom you saw whether he knew anything of JEAN LUIE?—I did; he told me he knew nothing of JEAN LUIE.

Dr. KENEALY: Are we to have that, what this man said?

Mr. Justice LUSH: I think LUIE referred to him.

Mr. HAWKINS: He did.

Mr. Serjeant PARRY: As a person whom he knew, and he also referred to him as having given to Mr. WHALLEY the name.

The LORD CHIEF JUSTICE: I think it is rather the other; that he referred to him as a person who knew him.

Mr. Justice LUSH: That is, provided he is the same man he referred to.

Dr. KENEALY: This is, a man in South Street.

A JUROR: He is one of the men of the 'Osprey.'

Mr. Serjeant PARRY: Will you produce the directory of Chicago, and the map?—Yes. (The Witness produced them.)

Mr. Justice LUSH: That is the only HARRY the sailmaker you found?—That is the only man I could find.

How did you know he was known as HARRY the sailmaker?—By making inquiries in William Street; I was told there was one HARRY working at Mr. TRONS'. I inquired for HARRY, and they told me he did not go by any other name. I asked him his real name, and he told me.

Mr. Serjeant PARRY: What is the date of the directory?—1869, and the map is 1872.

There is no Seventh Street on the map?—No.

And no JEAN LUIE in the directory?—No.

Cross-examined by Dr. KENEALY.

Are you a Detective on your own account, or do you belong to a company of Detectives?—I belong to the Detective National Agency. I am employed by Mr. ALEXANDER PICKERTON.

Is that a private company of Detectives?—It is.

How many do they number?—From 50 up to 100. It depends upon how much work we have to do.

How much money do you get for coming over to England?—I get my weekly wages.

No more?—No more.

A little present for yourself?—Not at all. I am not allowed to receive presents. It is against the rule of the Company to receive presents.

Mr. PICKERTON pays you your weekly wages, as I understand, and Mr. PICKERTON is paid by the Prosecution?—I do not know where he gets his pay. I suppose he will get it somewhere. I am not supposed to know where he gets it.

Have you heard at all from Mr. PICKERTON what it is he gets for sending you over?—Not at all.

How did you get into the Case?—I was ordered by the Superintendent of our office to make the inquiries.

Do you know who recommended PICKERTON?—I do not.

You know Newbury Avenue very well, I suppose?—Yes, I have gone through it quite often.

Are there any streets in Chicago which go by the name of First or Second or Third Streets?—Yes; there is First, Second, Third, Fourth, Fifth, Sixth, Eleventh, Twelfth, Thirteenth,—and so on up to Twenty-fourth.

Is there nothing intermediate between Sixth and Eleventh?—No, not in number.

What is the name of the street that would be Number Seventh?—I do not know.

You cannot tell?—I cannot tell.

Do you really mean to say there is nothing between the Sixth Street and the Eleventh Street?—Lots of streets.

I mean in number?—Not in number. There are Third, Fourth, and Fifth Avenues. There are streets, such as Eleventh Street.

Is that Newbury Avenue?—No, that is on the south side of the river.

You say you inquired for a grog-shop. Do they license these grog-shops in Chicago?—They do.

Was it from a brother Detective you inquired after this grog-shop?—No; I inquired from residents in the street.

Along what street?—Newbury Avenue.

He did not say he lived in Newbury Avenue. He gave a street connected with Newbury Avenue. You inquired in Newbury Avenue for a grog-shop kept by LUIE. You could not find one there?—No.

That was the only inquiry you made?—I inquired from one end of the street to another.

Newbury Avenue?—Newbury Avenue.

Does Newbury Avenue contain private houses or shops and private houses?—All private houses, but one grocery.

If they are all private houses in Newbury Avenue you need not have taken much time to find out there was no grog-shop?—There might have been some.

A private grog-shop?—Not at all. There might have been one, two or three or four years ago. I thought while I was inquiring I might make inquiries fully, to see if there was a grog-shop at any time.

Is GOODWIN one of the proprietors of Newbury Avenue?—Proprietor of the corner lot of Newbury Avenue and Taylor Street. That is the north end of Newbury Avenue.

Who did you inquire after ANDERSON of?—I went from house to house from Third Avenue to the end of the street, to inquire after CARL ANDERSON, and stopped, I may say, at some beer-shops and inquired after him there.

Is it a very unusual name in Brooklyn?—CARL ANDERSON?

Yes.—I am not certain. I do not know.

Did you look into the directory at all for ANDERSON?—No; I did not. I looked merely at Nineteenth Street.

Are you prepared to hear that there are nearly 300 ANDERSONS in the directory?—I have no doubt there may be 400.

Can you give me any idea of the population of Brooklyn?—I could not.

Is it a very large place?—Quite a large place.

The LORD CHIEF JUSTICE: What are the number of houses, about, in this Nineteenth Street?—From Third Avenue to Fifth Avenue is populated on both sides of the street; two blocks thickly populated; every lot is taken. Past the Fifth Avenue the street has been "graded," so that between the Fifth and Twelfth Avenue there are few houses.

I am speaking of Nineteenth Street?—There are cross streets, First, Second and Third Avenue, as you go along to the Nineteenth.

Dr. KENEALY: How many houses, do you say?—I cannot tell the number.

50 or 100?—More than that.

The LORD CHIEF JUSTICE: More than 100 houses in Nineteenth Street?—Yes.

Dr. KENEALY: Lodging houses?—Yes.

Inhabited by sailors?—Inhabited by everyone.

Sailors, and rowdies, and all sorts of people?—Yes; I did not inquire about their business at all.

Are there 200 houses in that street?—No: I do not think so.

I believe I may say without exception they are all lodging-houses?—There are, I suppose, half-a-dozen houses besides lodging-houses.

I do not understand you as swearing you inquired the name of every lodger in every house, or whether there was an ANDERSON in every house?—I inquired at every house.

If there was a person named ANDERSON?—If they knew a man of the name of ANDERSON or JEAN LUIE.

And not a single ANDERSON you could find out in Nineteenth Street?—No CARL ANDERSON. There might have been other ANDERSONS.

Did you find a single ANDERSON?—Not a single CARL ANDERSON.

Did you find a single ANDERSON?—I did not inquire for JOHN ANDERSON, I enquired for CARL.

What was the name of the company that refused to let you have their books, or their papers, or whatever it was?—The name of the company?

The steam company?—I did not inquire from any steam company.

There are steamboats upon those lakes?—Yes.

And steamboats in great numbers?—Yes, a great many.

Can you tell me whether they belong to a company or not?—Some of them.

What is the name of the company the steamboats belong to?—The Union Steamboat Company have about 15 or 18 steamers.

Is that the company that has the 'Ironsides'?—No; she does not belong there.

What company owns the 'Ironsides'?—The 'Ironsides' is owned, from what I learnt from Captain PEASE, by a gentleman named JOHN SCOTT. She does not belong to Buffalo; she was built in 1864, in Cleveland.

Was there an 'Ironsides' that blew up? Did you make an inquiry about that?—I knew that pretty well.

That had a bit of an accident?—Last summer.

When was that?—During the last summer.

On the lake?

The LORD CHIEF JUSTICE: He has not said that yet. Was it on the lake?—Yes, on the Lake Michigan.

Not Lake Erie?—No, she was the same boat.

Dr. KENEALY: Your lordship must not assume the 'Ironsides' is connected with Lake Erie, Lake Michigan.

Mr. Justice LUSH: Buffalo is on Lake Erie.

Dr. KENEALY: He spoke of 'Ironsides' in connection with Lake Michigan. Are the three lakes united together?—They are.

They go from one to the other?—Yes.

There are locks?—No, not locks.

The steamers trade over the three?—Some of them.

Mr. Justice LUSH: What he said was, "I joined the 'Ironsides' on Lake Michigan, trading from Buffalo to all the places along the lake."

Dr. KENEALY: There is Lake Erie, Lake Michigan, and what is the third?—Lake Superior and Lake Huron.

What company did the 'Ironsides' that blew up belong to?—The Detroit and Milwaukee Company, connected with the railway running from Detroit to Milwaukee.

What lake did she blow up upon?—Lake Michigan; she was plying between Grandhaven and Milwaukee.

Is there more than one company besides the Union?—In Buffalo? Yes.

On those three lakes?—Very likely there were several companies.

I thought ou might inquire.

The LORD CHIEF JUSTICE; At Buffalo, as I understand, the steamers all trade from Buffalo. I did not understand you to say you inquired anywhere except Buffalo.

Dr. KENEALY: Do these companies issue bills for their steamboats?—Yes, I expect they do.

Have you seen those bills?—No, I have not.

You know, as a fact, they issue bills every week, or every month?—I do not know. I have not been on the steamboats.

Were you in the office? Did you enquire at the office at Buffalo?—Yes.

How many offices did you enquire at at Buffalo about the 'Ironsides'?—Three different offices.

One was the Union; what was the other?—The Western Transportation Company, and then at Captain PEASE'S office, the steamboat inspector.

You did not enquire at the office of the company that owned the 'Ironsides' that blew up?—She was not owned in Buffalo; she did not belong to it.

She blew up on Lake Michigan?—Yes.

When you went to those offices did you see the printed bills they distribute at those places?—There are advertisements all over the route.

Did you ask if any of those referred to the year we are inquiring about?—About the 'Ironsides'?

You asked for their books, but you can hardly expect they would lend a detective——?—I did not ask for any books. I asked for books of Mr. DANIELS.

Did you ask for anything from the company?—I asked if there was such a thing as a Buffalo and Erie Steam Company, or a Buffalo and Erie Tug Company.

They said there was not?—They said there was no such company.

Examined by the Court.

Mr. Justice LUSH: Did you ascertain whether there was any Seventh Street running out of the Avenue?—There was no Seventh Street running out of the Avenue. Newbury Avenue is a short street, five blocks long.

No Seventh Street?—No.

This closed the Witness's examination, and the Court adjourned at 3.50 p.m., Mr. HAWKINS announcing that the next Witness would occupy some time.

[Adjourned till to-morrow morning at 10 o'clock.]

Mr. WILLIAMS, Summary Writer to the 'Daily Telegraph,' speaking of this day's proceedings, said, "Mr. LUIE himself sat in Court the whole day by the side of the Defendant, and heard all the Witnesses had to say with a quiet and confident air. Mr. WHALLEY sat by the side of Mr. COOPER-WYLD, and took an active share in the day's proceedings. It was part of Mr. WHALLEY'S mission to America to test and verify the statement made by LUIE, and his presence in Court was consequently intelligible. Dr. KENEALY'S popularity has by no means abated. A crowd followed him from the Judges' entrance to Charing-cross, and thence up the Strand, cheering vociferously."

SCENES IN PALACE-YARD ON THE 129th DAY.

The resumption of the great Tichborne Trial at Westminster yesterday has revived, as a matter of course, those evidences of interest given during the whole progress of the case in Westminster Hall, Palace-yard, and adjoining streets, which, insignificant as they may be considered, and distinctive as they are from those which speak throughout the length and breadth of the land, yet show in a marked manner which way the wind of metropolitan popular opinion blows.

From half-past nine, the Courts being in after-term sittings, the tide of Lawyers, Solicitors and their Clerks, Witnesses, Suitors, and idlers flowed into Westminster Hall without intermission. While this was going on at the great entrance, cabs were being driven up to the Queen's Bench private entrance, and Clerks and Messengers quickly emptied them of huge Treasury books *re* TICHBORNE. The learned Counsel for the Prosecution and Defence respectively passed into the corridor unperceived—indeed there were only half-a-dozen people round the door. In the Hall, when the Courts are sitting, there is invariably a locomotive crowd, and this was the case yesterday morning; but the Hall had its special fixed crowds as well—its Tichborne crowds—one of which closed up against the barriers outside the Court of Queen's Bench, and the other was marshalled on the opposite side in front of the old Irish applewoman's stand. At a quarter to ten precisely the Claimant drove into Palace-yard, and was cheered as soon as recognised by the few people who were there. When he entered the Hall and passed on to the Court, a hearty cheer was given, and some of the ladies present—and there were several—waved their handkerchiefs. And so after the door closed behind him the Claimant was for a time lost to the outside public. It has hitherto been the rule that those who secure good places near the barrier keep them during the day until the close of the proceedings; but there was an attraction in the Hall yesterday which drew many away who left to chance the recovery of their places, and which, indeed, all through the day until fully half-an-hour before the Claimant's departure kept a crowd assembled at the eastern side of the Hall. This was the enormous painting of the presentation of the freedom of the City of London to his Royal Highness the Prince of WALES at the Guildhall, on the 8th of June, 1863, executed by Mr. and Mrs. ALEXANDER MELVILLE, which is now the subject of a lawsuit in the present sittings. The work contains, as is stated on a placard, 450 portraits from life; and when it is observed that amongst them are those of very distinguished men now no more, of many living celebrities upon whose heads the snows of ten winters have wrought inevitable changes, there can be little wonder that the painting attracted and interested many hundreds yesterday. Amongst the portraits most noticed were those of the Prince and Princess of WALES (then just three months married), the Duke of EDINBURGH, the Duke of CAMBRIDGE, the Dowager Duchess and Princess MARY of CAMBRIDGE, the late Lord PALMERSTON, the Duke of ARGYLL, Mr. GLADSTONE, the Marquis (then Earl) of RIPON, the late Earl of DERBY, Mr. DISRAELI, the present Archbishop of CANTERBURY, the ate GEORGE PEABODY, Aldermen Sir SYDNEY WATERLOW, Sir T. GABRIEL Sir J. C. LAWRENCE, Sir B. PHILLIPS, and LUSK (the present Lord Mayor), and other municipal worthies. When half-past three was chimed there was a rush from the painting to the barrier, where then selected places were not to had. People had been entering the Hall in large numbers from half-past two, and hence by the side of and opposite to the Queen's Bench entrance stood considerable gatherings, among whom were many ladies. Outside the signs of preparation were visible enough. Under the old black wooden shed stood some 90 Policemen. About seven Inspectors were on the ground, and the proportionate number of Sergeants, whatever that may be. The authorities must have anticipated that the cold weather, combined with the fact it was the first day of resumed proceedings, would cause a poor attendance, as there were barely 100 Constables on duty yesterday, compared with the 150 generally told off for the Tichborne Demonstrations previous to the last adjournment. At half-past three there was not a great many people in the yard, but it was extraordinary how, between that time and ten minutes to four, the numbers swelled. Indeed, at the latter hour there were of those in the Hall, yard, and streets outside several thousand persons. At twenty minutes to four an Inspector rushed from the Hall to the sheds, and, to his order, the men "dressed." Then came the following movements, performed in a sort of semi-military style:—A Sergeant and eight men marched off to the Judges' private entrance; a Sergeant and ten men took possession of the western carriage entrance; a Sergeant and ten men marched to the next carriage-gate; an Inspector, Sergeant, and twelve men of the L's wheeled round to the corner of Bridge-street, now called the "Kenealy-corner;" and an Inspector, two Sergeants, and twenty men of the C's—not the C R.'s, to whom the duty used to be entrusted—marched across the street and took possession of the kerbstones. Inside their line, upon the footway, were triple rows of spectators. When the well-known brougham drove into the yard all the old fire appeared to be rekindled, if indeed it had smouldered. By some unaccountable chance the carriage was brought up outside instead of inside the "rest" facing the Hall entrance, so that when, at seven minutes to four o'clock, the Claimant came out and had to walk a short distance to the vehicle, there was a tremendous cheering and waving of hats and handkerchiefs, and it was with difficulty Inspector Denning and his men of the A division kept the way clear for the Defendant. While driving through the yard the cheering was hearty, and so was it when the carriage reached the corner of St. Margaret's Church and proceeded towards Victoria-street. As on former occasions, the gates of Palace-yard were either closed or blocked by constables, but the term of imprisonment suffered by those inside was of a much shorter duration than it was wont to be. Dr. KENEALY left the private entrance at four o'clock, and when he reached the corner of Bridge-street, the police having been drawn off, was surrounded by crowds, who cheered him on his way along Parliament-street and as far as Charing-cross. In the streets, as in Palace-yard, good temper was exhibited by the police, but, sooth to say, it had little, if any, trial.—*The Morning Advertiser.*

ONE HUNDRED AND THIRTIETH DAY.—FRIDAY, NOVEMBER 28TH, 1873.

Mr. NICHOLAS WAGGENER CASEY, sworn.

Examined by Mr. HAWKINS.

Do you reside at New Orleans?—Yes.

Are you the Auditor for the Customs of the port?—Yes.

And you have the charge of the records and documents relating to the port?—Yes, they are under my control—one of the divisions in my Office.

Have you a register of all vessels entering the port of New Orleans during the years 1852 and 1853?—Yes, I have charge of, and there is in the Office, such a register.

Have you searched through the years 1852 and 1853, for the purpose of seeing whether there was any vessel called the 'Osprey' at New Orleans during those years?—I have searched the entrance books.

The entrance books?—Yes, of the Customs House.

Did you find any vessels called the 'Osprey' entered New Orleans during those years?—I did.

How many?—There are two.

Was there one 'Osprey,' a steamship?—There was.

Commanded by whom?—Steamer 'Osprey,' JOHN POWER master.

When did she enter the port?—On the 17th December, 1852.

The LORD CHIEF JUSTICE: That is the first time?—That is the only time the steamer 'Osprey' entered—the first and only time.

Mr. HAWKINS: Where did she clear for?—She cleared for New Orleans from New York, by the way of Havannah.

Have you the manifest of this steamship?—I have. This is it. (Producing it.)

I see she was of 607 tons?—Yes.

Was that in the United States?—Yes, American register.

The LORD CHIEF JUSTICE: Is it necessary to pursue it? She is a steamship, and the 'Osprey' LUIE spoke of is a sailing ship.

Mr. HAWKINS: Quite so, my Lord.

The LORD CHIEF JUSTICE: I mean it is hardly necessary to dwell on that.

The WITNESS: I must return these papers.

Mr. HAWKINS: Then I do not hand them in.

The LORD CHIEF JUSTICE: We do not want them.

Mr. HAWKINS: There is another 'Osprey' you mentioned?—Yes, the ship 'Osprey.'

And the master?—WILLITON.

When did she enter the port from New Orleans?—December 28th, 1853.

From where?—She cleared from Liverpool.

British built, I think?—Yes, she was sailing under the British flag.

You have no existing record of when that vessel left New Orleans?—No; during the civil war the records were supposed to be destroyed in the Customs House. The register of clearances was lost, and also the entrances from the 1st January, 1852. The Federal soldiers were quartered in the Custom House, and it is supposed they were destroyed by the soldiers.

The LORD CHIEF JUSTICE: You have no record of her leaving?—No special record of her leaving.

Mr. HAWKINS: However, you say she was a British vessel, sailing under the British flag?—The ship 'Osprey.'

By the JURY: What tonnage?

Mr. HAWKINS: 465 tons, is that so?—That is according to the records.

You have the original manifest of that vessel?—Yes.

The LORD CHIEF JUSTICE: Of the ship?—Of the ship.

Mr. HAWKINS: It may be convenient, as this gentleman has to take them back, that we should have the particulars.

The LORD CHIEF JUSTICE: Yes, she appears to have been a ship?—Yes, the ship 'Osprey.' (It was handed to Mr. HAWKINS.)

Over what period did you say the records were gone?—There were no records found of the clearance of vessels from 1850 to 1858, but anyhow covering the period the information was asked for, and also the entrances up to the 1st of January, 1852.

Mr. HAWKINS: She is described as a vessel of 465 tons, built at Bristol, in England, bound to New Orleans, cargo taken on board at Liverpool, and I see the manifest is verified the 28th of December, 1853.

The LORD CHIEF JUSTICE: You may take it that up to the 28th of December, 1853, the only 'Osprey' mentioned is this British-built ship.

Mr. HAWKINS: That is all, and I think Mr. CASEY may have this back.

The LORD CHIEF JUSTICE: Yes.

Mr. HAWKINS: Are you able to give us some information now with reference to the vessel called the 'Helvetia'?—Yes.

Can you give us that from 1851?—Do you mean whether there was such a vessel entered or not?

Yes.—From information obtained in the Custom House otherwise than the register of clearances.

Dr. KENEALY: Can we have that? This is hearsay evidence.

The LORD CHIEF JUSTICE: I wanted to know from what it appears?—From the records in the Customs House.

You are speaking from records?—Yes.

Not from what anybody has told you?—Not from what anybody has told me, but what I have found in the Custom House otherwise than from the register of the clearances—I mean other than the entrances or clearances.

What are the records you are speaking of?—The record is a bond given for a crew list.

Dr. KENEALY: Was this a matter of record or some accidental thing that was there?

The LORD CHIEF JUSTICE: A bond of what gentleman?—Let me see.

Have you it there?—Yes, I have a copy of it here.

A copy made by yourself?—No; I did not make it myself, but I examined it.

Without telling us what ship it relates to, in order that we may see whether it is admissible or not in point of law; tell us the nature of the bond?

Dr. KENEALY: Would your lordship be good enough to look at it?

The LORD CHIEF JUSTICE: Yes; but I excluded the name of the vessel.

Dr. KENEALY: Everybody knows what there is in it.

The LORD CHIEF JUSTICE: This is a bond by the American law?—Yes.

There is some statute law, I suppose, which requires that?—No; let me explain to you that the law did not require a foreign vessel to give that bond, but from some misunderstanding the entry clerk told me that bond was given—he supposed it was given. That bond was not required by the United States; but it appears that bond was on the file. I did not consider it altogether regular, but brought a copy of it.

It was given as a bond?—It was given as a bond; but was not required by the regulations of the Custom House.

Nevertheless, there it is among the records?—Yes; I considered it a little irregular, and brought a copy. Still it is not required by the Government of America.

It is only American vessels that give that bond?—American vessels. I beg pardon, is not that for the steamship? That is for the 'Helvetia,' and the 'Helvetia' was not an American ship.

Then the bond was regular?—Yes.

You are thinking of the other?—Yes, but that bond does not appear to be complete.

Mr. Justice LUSH: Not complete?—No, there is some informality about it, but it was on evidence that that vessel had been there, and confirms some other evidence that we found outside the Custom House.

It was not filled in properly?—No.

That is the defect in it?—That is the defect in it.

The LORD CHIEF JUSTICE: But it was executed by MARSH, the master, and WHITELOCK, the surety?—Yes.

Mr. Justice LUSH: And accepted by the Government as sufficient?—I cannot say; it is there on record.

The LORD CHIEF JUSTICE: There are certain blanks not filled up?—Certain blanks not filled up.

But it was executed by the master and by the surety?—Yes.

And deposited with the proper authorities as the necessary bond?—Yes.

Then this is the bond executed by the Master of the 'Helvetia,' and one WILLIAM WHITLOCK. "Know all men by these Presents, that we, B. F. MARSH, Master or Commander of the ship called the 'Helvetia' now lying in the district of New Orleans, and WILLIAM WHITLOCK, are held and firmly bound unto the United States of America, in the full and first sum of 400 dollars money of the United States; to which payment well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 26th day of December in the year 1851. Whereas, the above bounden hath delivered to the Collector of the Customs for the district of New Orleans a verified list, containing, as far as he can ascertain them, the names, places of birth, residences, and description of the persons who compose the company of the said called the now lying in the said district, of which he is at present Master or Commander, of which list, the said Collector has delivered to the said Master or Commander a certified copy. Now, the condition of this obligation is such, that if the said Master, or others, shall exhibit the aforesaid certified copy of the list to the first Boarding Officer at the first port in the United States at which he shall arrive on his return thereto, and then and there also produce the persons named therein to the said Boarding Officer, except any of the persons contained in the said list who may be discharged in a foreign country with consent of the Consul, Vice-Consul, Commercial Agent, or Vice-Commercial Agent there residing, signified in writing, under his hand and official seal, to be produced to the Collector of the district within which he may arrive as aforesaid, with the other persons composing the crew as aforesaid, or who may have died or absconded, or who may have been forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the said last mentioned Collector; then, and in such case, the above obligation shall be void, and of no effect; otherwise it shall abide

and remain in full force and virtue. Sealed and delivered in the presence of

(Signed) "B. F. MARSH.
"WM. WHITLOCK."

Mr. HAWKINS: From the documents you found recorded in the Custom House are you able to say when the 'Helvetia' mentioned in that bond arrived at New Orleans?—No. I mean from the records of the Custom House I am not able to tell.

Have you any authentic record or means from which you are able to tell us when she arrived?—I have not of my own knowledge.

The LORD CHIEF JUSTICE: What is that other paper I see that records the arrivals?—Records the entrances and clearances for 1852 and 1853, thoroughly searched and no 'Helvetia' found.

Have you searched them?—Well, I did search them. The clearances are destroyed, but the entrances I searched and I could not find the 'Helvetia.'

Mr. Justice LUSH: For 1852 and 1853?—For 1852 and 1853.

Are those bonds given after the ship has arrived in port?—Yes, and when the ship is to depart.

Mr. HAWKINS: Have you made search in the Custom House at New York?—Yes.

With reference to the 'Helvetia'?—I did. I may explain, probably, why I did so. The price current is published, and the arrivals and departures of vessels at New Orleans, and there was found the arrival and also the departure of the 'Helvetia;' but that not being an official document I did not consider it necessary to bring it. I have only an extract from it, and that I did not see myself.

But it led you to make a search, I think you said?—In connection with this bond that was found it induced me, when I came to New York, to make an examination there in the Custom House.

The LORD CHIEF JUSTICE: You did that yourself?—I did that myself. I was also enabled to find the owner of the 'Helvetia,' or at least his manager—the man who conducted his business.

First, tell us what you found, or did not find, on your search at the Custom House?—I had better, if you will permit me, tell you what I discovered from the owner, because I first saw him.

That may be objectionable.

Mr. HAWKINS: You searched for the purpose of seeing the arrival and departure of this vessel, the 'Helvetia,' from different ports?—Yes.

The 'Helvetia,' in that bond, is the one commanded by Commander MARSH?—B. F. MARSH, master.

Mr. Justice LUSH: She must have been at New Orleans in September, 1851?—Yes, that is the day of her departure—supposed to be.

Mr. HAWKINS: Now, will you give me her arrival and departure as you have it from the Custom House in New York, from different ports, beginning 1851, 1852, and 1853. Did she enter New York in October, 1851?—On the 11th October, 1851, ship 'Helvetia,' MARSH master, from Havre.

Did you find on March 29th, 1852, that she was also entered to New York from Havre?—I do.

Do you find that on the 12th April, 1852, she cleared from New York for Havre?—April 12th, ship 'Helvetia,' MARSH master.

For Havre?—Yes, cleared from New York for Havre.

July 1st, 1852, entered New York from Havre?—Yes, that is correct. July 1st, 1852, ship 'Helvetia,' MARSH master, from Havre.

August 7th, 1852, cleared from New York for Havre?—Yes.

October 28th, 1852, entered New York from Havre?—That is correct.

Then April 16th, 1853, entered New York again from Havre?—April 16th, 1853, entered New York, ship 'Helvetia,' MARSH master, from Havre.

May 13th, 1853, cleared from New York for Havre?—Ship 'Helvetia,' MARSH master, cleared from New York for Havre.

August 16th, 1853, entered New York from Havre?—Yes.

September 12th, cleared from New York for Havre?—Yes, ship 'Helvetia,' MARSH master.

28th November, 1853, entered New York from Havre?—That is correct.

January 13th, 1854, cleared from New York for Havre?—Ship 'Helvetia,' MARSH master.

7th April, 1854, entered New York from Havre?—Yes.

Then, November 13th, entered New York from Havre?—Yes.

Mr. Justice LUSH: Entered again?

Mr. HAWKINS: Yes.

Mr. Justice LUSH: You have not the intervening clearance?

Mr. HAWKINS: I have not it here.

Then, February 21st, 1855, cleared from New York again for Havre?—Yes.

Have you any further entries you were able to find respecting her clearances from or entering New York?—Yes, I have the crew list.

I will come to the list directly?—No, I have no further entries from the Customs.

The LORD CHIEF JUSTICE: Did you find any record or entry of any other 'Helvetia,' besides this one, in the Custom House?—I did not examine for that purpose the Custom House in New York.

Merely to test this vessel you had the record of at New Orleans?—Yes.

Mr. HAWKINS: Do you produce copies of the crew list of the 'Helvetia' you have been speaking of for December, 1851?—Yes. I found in the New York Custom House a copy of the list of the crew that she sailed from New Orleans with on the 26th December, 1851. She sailed from New Orleans for Havre, and returned from Havre to New York, and there deposited the crew list that she sailed with from New Orleans.

Have you the crew list?—I have a copy of it.

Do you find the name of JEAN LUIE there at all?—It is not.

Have you any other crew list?

Dr. KENEALY: I do not know whether this Witness applied for permission to bring over these original crew lists?

The LORD CHIEF JUSTICE: That does not affect the admissibility.

Dr. KENEALY: I thought documents of this kind could not be given in evidence by copies unless it is negatived that the original could be got.

The LORD CHIEF JUSTICE: But is not that always assumed in the case of a document out of the jurisdiction of the Court? I never heard it laid down that you must first prove that you applied for the document and could not get it?

Dr. KENEALY: It is referred to in the Case I mentioned yesterday to Mr. Justice LUSH in the 32nd Law Journal.

Mr. Justice LUSH: What is that Case?

Mr. MCMAHON: There was a document in the Probate Court, and Mr. Justice CRESSWELL would not allow it in evidence unless proper application had been made to the highest authority.

Mr. Justice LUSH: What was the occasion, to grant Probate in this country?

Mr. MCMAHON: It was a dispute as to whether or not the Plaintiff in that suit—a natural child—was entitled by the Portuguese law to recover the whole of the property of his father; and somehow or other a question arose as to one of the documents. It is in the 32nd Law Journal—Probate and Matrimonial Causes.

Mr. Justice LUSH: I do not know whether you have a proof, as you had yesterday, of any application being made.

Mr. HAWKINS: I will ask the Witness.

Mr. Justice MELLOR: Yes: it may save discussion.

Mr. HAWKINS: Did you make an application to bring the original documents?—I did not myself, but the gentleman who was with me.

Dr. KENEALY: No.

The LORD CHIEF JUSTICE: Was it in your presence?—It was in my presence. If I am permitted, I will go further on with my statement.

Yes, if it was in your presence?—It was in my presence. I went to the Collector of the Port, and the gentleman with me asked him if he would permit these documents to be taken; and he said he could not without the consent and approval of the Secretary of the Treasury, who was not in the city.

Dr. KENEALY: That will not do. According to the authority of Mr. Justice CRESSWELL, application must be made to the Officer highest in authority. It will not do to make an application to a subordinate.

The LORD CHIEF JUSTICE: I think there was evidence given yesterday of the fact that Mr. PURCELL applied to the Secretary, Mr. RICHARDSON, for certain things, and got a general answer that he would not allow certain things to be taken away.

Dr. KENEALY: No; that applied to Mr. PURCELL'S application.

The LORD CHIEF JUSTICE: To what?

Dr. KENEALY: His papers in Washington.

Mr. HAWKINS: Mr. PURCELL was obliged to leave before this gentleman was in New York, and therefore there are matters in which this gentleman had to exercise his own discretion.

Dr. KENEALY: That shows that the refusal to Mr. PURCELL could not apply to them.

Mr. Justice MELLOR: What is that Case you were referring to in the Probate Court?

Mr. MCMAHON: The Case 'CRISPIN v. DOGLIONI,' in the 32nd Law Journal. The objection was raised to admitting secondary evidence from a document from the Portuguese Court, and the Officer who came to give evidence had not applied to the superior Officer of that Court, who had not refused to give it, and on that ground Mr. Justice CRESSWELL would not admit it.

Mr. Justice MELLOR: That may depend on the nature of the document.

Mr. MC.MAHON: It was a document in the Portuguese Court.

Mr. Justice MELLOR: If a private document relating to a private matter, that might be so.

Was this a copy that you examined?—It was. I examined it with the original.

Mr. Justice MELLOR: You would be right if it was a private document, and the distinction appears to me to be between a public and a private document.

Mr. Justice LUSH: The decision in 'BOYLE against WISEMAN' was referred to, which makes a distinction between a public and a private document. There an action was brought against the late Cardinal WISEMAN. It was sought to give evidence of a letter in the possession of a person, and sought to be given by means of a copy; and it appeared that proper application had not been made to the owner of the letter to let the Witness produce it. Secondary evidence was admitted at the Trial, and the

Court set aside the verdict in order that it might go back to ascertain (because there was no full examination on it) that the application had been made, and what sort of pressure had been put upon the owner of the letter to let it go, and there was a new Trial on that ground; but in judgment Chief Baron POLLOCK says, although he agreed with reluctance with the majority of the Court, it ought to be received, in his opinion. However, he yielded to the majority. Then he makes a distinction between private documents of this kind, the parting with which could injure no one, and documents of a public nature, the removal of which might cause injury to the public.

Mr. Justice MELLOR: They might be wanted by several persons at the same time.

Mr. McMAHON: With that distinction I do not seek to interfere; but in this Case, which is reported at page 109 of the 32nd Law Journal it is stated thus——

Mr. Justice LUSH: Before you read it tell us what was the application to the Court.

Mr. McMAHON: A Witness was called to prove the handwriting of one of the parties to the Cause.

Mr Justice LUSH: What was the Suit?

Mr. McMAHON It was an application by a natural son to obtain possession of all the plaintiff's property in this country, pursuant as he alleged to Portuguese law.

Mr. Justice LUSH: By means of a probate?

Mr. McMAHON: By means of a probate.

The LORD CHIEF JUSTICE: He sought for probate and will here.

Mr. McMAHON: Yes, on administration; and in the course of the Case two questions were raised, and one of those questions was this:—"On the 26th February a Witness called for the Plaintiff stated he knew the handwriting of HENRY CRISPIN, the deceased; that he had lately seen in Lisbon, in the custody of the Scrivener (*i.e.*, the Secretary) of the Court of Relacao, a paper filed in the process of that Court. He was with the English Solicitor of the Plaintiff, and saw the paper photographed, and had compared the photograph copy with the original. The Scrivener said that it was not permitted to anyone to take the original out of his custody. HANNEN: In whose handwriting was the paper? Mr. MONTAGU CHAMBERS objected. Secondary evidence of the paper is inadmissible unless it be shown that the Portuguese Court was applied to for leave to produce it here. HANNEN: It is sufficient to let in secondary evidence to show that the paper was in the custody of a person whom this Court cannot compel to produce it, and that he declined to part with it. Sir C. CRESSWELL: To render evidence of the handwriting admissible, it should be shown not only that the person who has the actual custody of the paper, but that the person who has the legal custody of it, refuses to part with it. To let in secondary evidence of a document in the custody of a clerk in a bank at Paris, application to the clerk without an application to the firm would not be sufficient." That is all. Therefore, this was obviously a public document in the hands of a public officer, and the application had not been made to the Portuguese Court itself to admit it.

The LORD CHIEF JUSTICE: I do not know whether your attention has been called to the Perth Case in the House of Lords, where they held that a French register of marriages, births, and deaths was admissible in evidence on being proved that the register was kept according to French law, and would be received in evidence in the French Courts. It was not at all made a condition that the application should have been made to the authorities who had the custody of those registers to permit the registers to be produced. It was held to be enough that upon the testimony of the French applicant the registers were kept according to the French law, and would be evidence in a French Court.

Mr. McMAHON: The point was not made there that they ought to have applied.

Mr. Justice MELLOR: I do not think a document becomes public because it is in possession of the Court. With regard to a public document the effect of it is this, that it would be inconvenient in the highest degree if it were required at various places at the same time. The original could not be had at various places at the same time; and therefore, for the public convenience, it has been established that in the case of a document of that description an examined copy is sufficient. That is the ground. You would never be required to make any application to produce the original; because the presumption is that, being a public document, and required for public purposes, as distinct from private purposes, it is necessary, in the interest of convenience generally, that such a document should be proved by an examined copy. Now, in this particular case these crew lists are kept, not like a paper in a particular Suit, but kept for general convenience and in the public interest for purposes which are public and important; and therefore I do not see myself how any application is necessary. If the document itself, if it had been produced, would have been admissible, I cannot myself understand why it is necessary to make an application in order to let secondary evidence in.

Mr. McMAHON: No doubt that has always been understood to be the law as your lordship has laid it down, but this is a Case considered by Mr. Justice CRESSWELL.

The LORD CHIEF JUSTICE: On the other hand, you see the House of Lords must be taken to be an ultimate tribunal to settle a case of this kind.

Mr. HAWKINS: There is the Case of 'ABBOTT v. ABBOTT' in the 29th Law Journal, to which I may call attention.

The LORD CHIEF JUSTICE: The evidence you require as a condition precedent to the validity of the document certainly was not given.

Mr. McMAHON: There is a Case I myself argued years ago of 'SAYER v. GLOSSOP,' bearing closely on this point, where a party was allowed to speak to a register of marriage without producing the entry itself, and the Court ruled against me on the ground Mr. Justice MELLOR has taken of its being a public document, that it could not be handed about from place to place, and we should be content with a copy: but I must say I did not make the objection that they ought to have applied. Therefore this is the decision of a Judge of great eminence.

The LORD CHIEF JUSTICE: No doubt about that.

Mr. Justice LUSH: Have you seen another Case decided by the Judge Ordinary in 1860—that is, three years before that one in which he held the other way as to a register of marriage, there deciding that a marriage in Chili may be proved by a copy of the register of marriages there, it being proved that it was the duty of a person celebrating a marriage to keep a register, and that that register of it would be admissible in Chili. There, like the House of Lords, the Judge Ordinary ruled that a copy was admissible without any proof that the party had asked for the original to be brought over. Now, in the latter case, he never intended to overrule that. He says nothing about it, and I cannot help thinking, from the closing words of his judgment, he must have regarded that will as a private document, notwithstanding it was said that it was filed in the offices of the Court, because he compared it to a bank clerk in Paris holding a bill of exchange, and says you could not let in evidence of a document in the custody of a clerk in Paris by making application to the clerk, without showing that you had made an application to the principal.

Mr. McMAHON: He could not by possibility suppose that a will or document deposited in the offices of the Court, with the Secretary of the Court, was a private document.

Mr. Justice LUSH: He must have done so for the purposes of that judgment, when I consider the terms of it, and contrast it with the judgment given three years before.

Mr. McMAHON: But it does not appear, from the report there, that his attention was called to that prior Case.

Mr. Justice LUSH: No, but the prior Case is in accordance with the decision of the House of Lords.

Mr. McMAHON: No doubt the general rule is as your lordship says.

Mr. Justice MELLOR: A will is in the nature of a private document.

Mr. McMAHON: Not after it is proved and goes into the custody of the Court; it is then a public document, and is kept for the benefit of the world.

Mr. Justice MELLOR: That is to say it would be proved, no doubt, by an examined copy, but if you look at the origin of the distinction, it seems to come within the nature of a private document, which only the parties in the Cause had any concern in, but here all the world have. Every one who wants to prove the fact of the existence of the crew list from every quarter of the world may come.

Mr. McMAHON: Yes; but substantially I say that a will or any other document once deposited, no longer has the character of a private document; it is public, and belongs to the whole State.

The LORD CHIEF JUSTICE: Would not that depend very much on the law of the place where the will was?

Mr. McMAHON: I apprehend even here, taking the distinction, the crew list would be for the purpose, when slavery prevailed, of seeing that no slaves escaped, or for the purpose of seeing that the proper contracts were carried out.

Mr. Justice LUSH: Then, if that was a public document, and judgment is supposed to have affirmed that a public document cannot be proved here, except means are proved to have been taken in order to get the origiual, then it is directly in conflict with the preceding Case in 1860, and the decision of the House of Lords. By which must we be bound?

Mr. McMAHON: I think, in the House of Lords the point was not taken.

The LORD CHIEF JUSTICE: But we must assume that they, in considering whether the documents were admissible or not, had considered it was part of the law of evidence that such a document could only be received where due diligence had been used to procure the original, or they would not admit the document. It must be taken that they had present to their minds judicially all the circumstances necessary to make of such a document secondary evidence admissible.

Mr. McMAHON: I only mention to your lordships SAYER v. GLOSSOP, a prominent case against myself, in all leading particulars. It is in MEESON and WELSBY, in the Court of Exchequer. The point was this—it was simply an action against a woman on a bill of exchange. There was a plea of coverture. The question was, whose was the writing in the signature of marriage in the marriage book; and I objected that the party could not speak to the signature in the marriage book as being identical with that of the Defendant, unless the marriage register itself was produced; and the Court, in a very learned and careful judgment by Mr. Baron PARKE, held it was quite sufficient, in such a document

as that, to give secondary evidence, the party having seen it, because the book could not be produced; and I can only say that I did not take the point that an application had not been made to the highest authority possible. The point therefore seems new.

The LORD CHIEF JUSTICE: However, there is this Case in the House of Lords. I quite agree the authorities go to this extent, that if a document be private, you must show that you have used reasonable exertion to obtain the production of the original before we let in secondary evidence. We are dealing here with the case of documents of a public character, and I am not aware of any authority in which it has been held, with regard to such documents, that you must show you have made application to get them. It may be matter of observation that instead of endeavouring to get the originals, you have been content with the production of secondary evidence; that is matter of observation for the Jury as to the effect of the evidence. I confess it would be open to very great inconvenience if it was said that a public document of a foreign country must not be proved by means of secondary evidence, until it was sought to get the original, because in nine cases out of ten, or perhaps ninety-nine cases out of a hundred, a foreign Government does not allow a public document or public records to be produced in another country. I think, therefore, the decision in the House of Lords, which allowed registers of marriages and deaths in France to be produced on it being shown by proper testimony that the originals would have been available in a French Court, covers this Case, and we must assume that the House of Lords was in a condition necessary to render such secondary evidence admissible. I think the case of crew lists deposited in public offices by the law of America for public purposes, are all within the nature of public documents, and therefore secondary evidence is admissible.

Mr. Justice MELLOR: I am entirely of the same opinion. I think we must presume that the same motives exist which made public documents in England provable by examined copies, the great inconvenience and impossibility of producing them at different places and at the same time, although wanted at the same time; therefore I think we must take it to be the presumption, and therefore useless to apply, when we know in England that it could not, and would not be done on that very ground. So we must assume that foreign Governments would not part with documents of a public nature on the same principle, and it, therefore, from the necessity of the case, imports that a copy is sufficient if proved to have been an examined copy.

Mr. Justice LUSH: I am of the same opinion. There is a class of documents which, even in this country, cannot be proved by secondary evidence; and I think there is one case in which the Judge refused to receive the original when tendered, because he would not set a precedent of that kind. I refer to books which the law requires to be kept, such as the transfer books of the Bank of England, entries in shipping, registers of the docks, and other documents of that kind, Customs House and Parish Registers, and so on. All those, even in this country, can be proved formerly under the Common Law by means of un examined copy, and now by statute, by means of a certified copy. Now documents of a public nature, especially of a foreign country, although not by law bound to be kept, may be proved by an examined copy; and I think we may regard this as a document of a public nature; it is a list of the crew of a vessel sailing from one American port to another, which is, by usage, deposited at the Custom-House and preserved among the records of that department; I think, therefore, the ruling of the late Judge Ordinary, in the Case cited, has no application to the present Case, because rightly or wrongly his lordship must have treated that as a private document. In other Cases, where the question has arisen it has been treated as of a public nature.

Mr. HAWKINS: Although in your lordships' judgment that the document is admissible, I should like to give evidence as to whether reasonable diligence has not been actually used for the purpose of obtaining the document; and for that reason I propose to recall Mr. PURCELL, and put this question to him, whether he made a general application; and if a general refusal was given by the head of the department, I apprehend that such an application as this gentleman made to those who have the custody and care of the document is enough.

The LORD CHIEF JUSTICE: Would not that depend very much on the nature of the document? Now, suppose the application had been made to Mr. Secretary RICHARDSON to allow the different documents of different classes to be brought to this country, he would have exercised his judgment and discretion, or might have said so, and said "Well, there are certain documents wanted much too important to allow them to be removed from the place where they are deposited; there are others which may be wanted probably, not equally important; as to those I have no objection." It is quite enough to show that there was application made to be at liberty to bring documents to this country, unless you show what all the different documents were as to which it was intended the permission, if obtained, should apply.

Mr. HAWKINS: He was asked, and said, "You need not trouble yourself to enumerate them," because if you will allow me to ask Mr. PURCELL one question on that, it may remove difficulties hereafter, and it may be convenient.

The LORD CHIEF JUSTICE: Very well.

Mr. HENRY FRANCIS PURCELL, recalled.

Mr. HAWKINS: You have heard this discussion. Will you be good enough to tell us what was your application?—I commenced by telling Mr. RICHARDSON that I required various records of books from various Custom Houses, and commenced enumerating them, but he said, "That will do, Mr. PURCELL; let me give you a general answer at once. I decline to let any of the records leave this country. You can examine them, and every facility shall be given to you to do so."

The LORD CHIEF JUSTICE: His answer in the negative was general?—It was general and full, and cut me short at once.

Mr. Justice MELLOR: Who was that application made to?—Mr. Secretary RICHARDSON.

Mr. HAWKINS: That being a matter for you to determine, as a matter of fact, that ceases to be a matter of law.

The LORD CHIEF JUSTICE: Yes; at the same time I am not sorry to have an opportunity of saying what my opinion of the law on the subject with reference to public documents in a foreign country is.

Mr. HAWKINS: I thought it right to call him, to remove any possible difficulty on the matter.

Mr. NICHOLAS WAGGENER CASEY, recalled.

Mr. HAWKINS: I think we had the crew list of the 26th of December?—I produce a copy of the crew list of the crew with which the 'Helvetia' sailed from New Orleans.

December 1851, I think?—The 26th of December, 1851.

That was as you have said, filed at the New York Custom House?—Yes.

Is the name of JEAN LUIE among the list of the crew?—It is not.

Have you a copy of the crew list which was also deposited at the Custom House, New York, showing the names of that 'Helvetia' crew of the 5th of January, 1853?—Yes. I have a crew list dated the 5th of January, 1853, when she sailed from the port of Savannah, Georgia, and on her return.

Was that fixed on her arrival at New York on the 12th of May, 1853?—So far as the date that it is May, but it does not give the day.

It is May, 1853?—It is May, 1853, but the certificate of the inspector does not give the name.

Is the name of JEAN LUIE in that crew list anywhere?—It is not.

Now those were the only crew lists which I think you found in the Custom House?—The only ones I made any examination of.

The only ones you were able to find?

Dr. KENEALY: No.—No; the only ones I examined. They have other crew lists I have no doubt, but I did not examine any others. I did not make an effort to produce any others.

Mr. HAWKINS: Now was there in the port of New Orleans a register kept of all registered vessels, foreign as well as others?—There is a register kept of registered vessels. That is the difference from the entrance of vessels.

Quite so. I am speaking of something different from the entrance and clearance of vessels; a register of vessels?—Yes, a register of vessels.

Mr. Justice LUSH: What is that register of foreign vessels?

Mr. HAWKINS, Of the names of particular vessels coming to the port?—There is a register of all vessels that entered the port; but then, if you will permit me, all American vessels are registered or licensed.

All American vessels are registered or licensed?—Yes, they are registered or licensed.

Mr. Justice LUSH: I understand that, quite apart from that, there is a register of all the vessels entering the port?—Yes, that is kept in the office of the Collector of Customs.

The LORD CHIEF JUSTICE: What is the distinction as regards some being registered, and others being licensed; you used both terms?—Well, there is some distinction, but I am not prepared exactly to say what it is. I think it relates probably to the size of the vessel; vessels under a certain tonnage are licensed.

Not the distinction between vessels going foreign?—No.

Mr. MCMAHON: I think it is mentioned in KENT'S 'Commentaries' that vessels going foreign are registered, and those in the coasting trade are enrolled or licensed.

The LORD CHIEF JUSTICE: That is what occurred to me.

Mr. MCMAHON: Yes, your lordship will find it in the last edition of 'Kent.'

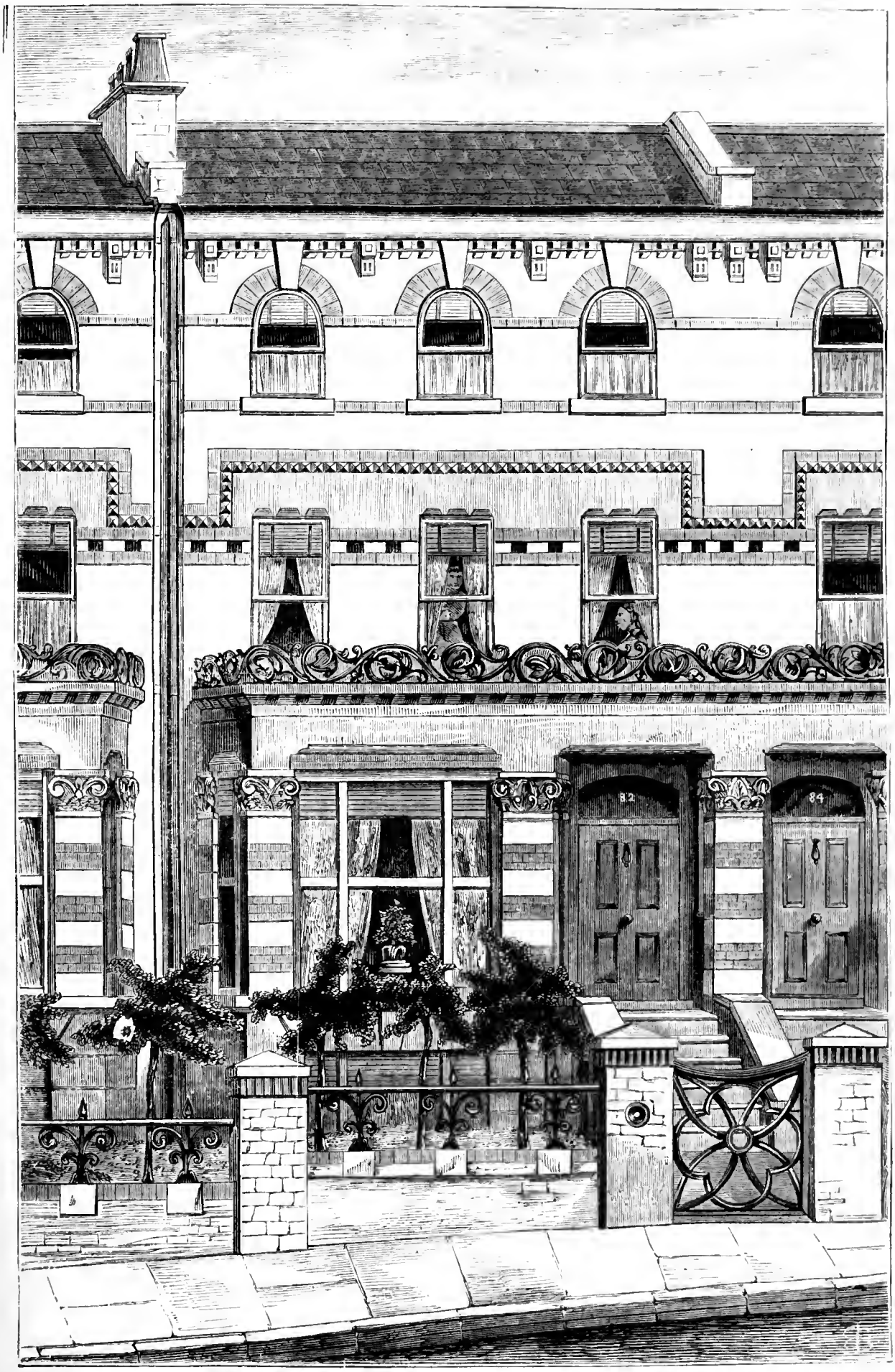
Mr. HAWKINS: Have you searched the register of New Orleans for the purpose of seeing whether any license by the law of the State is required for changing the names of vessels?—I searched for the purpose of ascertaining whether a foreign vessel had been registered and its name changed, or whether any vessel bearing the name of 'Helvetia' had been changed to 'Osprey.'

During what year did you search for these names?—Commencing in 1850 and terminating in 1854.

Did you find the name of any vessel registered as the 'Helvetia,' changed afterwards to the name of the 'Osprey'?—I did not.

Or any trace of any vessel of the name 'Helvetia' or 'Osprey,' except this you have already mentioned to us?—None at all except those.

Did you search also the registers for the purpose of seeing if



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during the years you have mentioned there was any captain whose name was BEANNETT or BENNETT?—Yes, I searched the entrance register—the book of entrances.

The LORD CHIEF JUSTICE: That is New Orleans?—The New Orleans Custom House, to see whether any Swedish, Norwegian, or Danish vessel had entered the port of New Orleans with BENNETT as master; I was not enabled to find any.

Cross-examined by Dr. KENEALY.

Have you any appointment in writing of your office?—I have not.

I mean are you not appointed in writing?—I have no commission.

Are you appointed in writing?—I believe the mode of appointment is, the Collector of the Port appoints the persons to the different positions, and that appointment is approved by the Secretary of State for War and the President.

But you yourself had no appointment or deputation in writing?—None.

How long have you been at the New Orleans Customs?—I was appointed the 1st February, 1873.

Had you any knowledge at all of the Custom House before that?—None whatever.

Then you can give me no information, I suppose, whether in those years you have been mentioning—1851, 1852, 1853, and so on—business was done regularly or irregularly at the New Orleans Custom House?—I cannot from any personal knowledge I have of it.

You say a great many documents were destroyed during the Civil War?—That is what I was informed, to account for the deficiency.

Were documents other than those you mentioned destroyed? Clearances, those have all been destroyed for a great number of years?—I cannot say for a great number of years, but the year I wished to examine the clearance book could not be examined, but to what that extends I cannot tell you.

Were there any official documents besides the clearance documents that were destroyed in that war?—The entry book previous to the 1st of January, 1852, was not found, and I was informed that was destroyed at the same time with various other documents.

That is what I want to know, what were the other documents that were destroyed in the Custom House during the war?—I cannot inform you, because I did not make the entry.

At all events, I understand from you that a great many others were destroyed besides those you have mentioned?—So I was informed.

I have not the exact date of the record of entrances, which you say was not destroyed there when you went?—In the New Orleans Custom House.

Yes; you say the records of the clearances are destroyed, and the records of entries for certain dates are kept. I want you to tell me the date when the record of entries have not been destroyed?—Commencing the 1st of January, 1852, extending up to 1854, is the extent I went. How much further they extend I cannot say now.

The LORD CHIEF JUSTICE: You did not go beyond 1854?—I did not go beyond 1854.

Dr. KENEALY: Now let me see that copy of the bond. What did I hear you say about this applying to foreign vessels or not applying?—I said foreign vessels were not required to furnish.

To furnish such bonds?—Yes.

Can you give me any notion at all of how it was or why it was that this was given, the 'Helveta' being a foreign vessel?—The 'Helvetia' was not a foreign vessel.

Mr. Justice LUSH: He said she was an American vessel?—American vessel.

Dr. KENEALY: Now about these crew lists. I shall not trouble you at all about the crew lists of 1851. I see the name of WILLIAM LEWIS is on the crew list of the 'Helvetia.' Have you seen that?—Yes.

The LORD CHIEF JUSTICE: How is it spelt?—L-E-W-I-S. He is one of the sailors.

Dr. KENEALY: There are the words to it "No proof." What is the meaning of that?—"No proof" as regards nationality.

Mr. Justice LUSH: Do you mean of that person?

Dr. KENEALY: No, there are a great number of names.

Mr. Justice LUSH: No proof as to any of them?

Dr. KENEALY: No proof as to any of that number. There are ten of them bracketed "No proof."

A JURYMAN: Is the nationality of WILLIAM LEWIS put?

Dr. KENEALY: No, he is one of those who has no nationality.

The JURYMAN: Is the age of the crew given?

Dr. KENEALY: The age of the crew is given with the exception of those ten in the brackets, and there is nothing with reference to any of those ten.

The JURYMAN: How many did the crew consist of?

Dr. KENEALY: Twenty-eight men.

The JURYMAN: LUIE'S 'Helvetia' had only fifteen men.

Dr. KENEALY: Very likely.

The LORD CHIEF JUSTICE: What is the description of the vessel?

Dr. KENEALY: The ship 'Helvetia.'

The LORD CHIEF JUSTICE: She is described as a ship?

Dr. KENEALY: She is described as "the ship 'Helvetia,' of New York."

The LORD CHIEF JUSTICE: In the entrance—you have looked through them—is the distinction observed between a ship and a barque? You know the difference I presume?—No, I do not; nor do I remember whether the distinction is preserved.

A JURYMAN: Have we had the tonnage of the 'Helvetia'?—The tonnage of the 'Helvetia,' at the New York Customs House clearance, is sometimes entered at 971 and a fraction, and on one occasion at 972 tons.

Dr. KENEALY: I see that six or seven of these men appear to have gone away, and there were additional men taken on in their places?—Yes, you will see that entered—whatever the number is there entered.

Seven absent, and there are six additional men put on, I suppose, in their places; is that it?—I suppose that is it.

And amongst the seven absent is WILLIAM LEWIS?—I cannot answer from memory now. You will read it there, whatever it is.

Then there is reference to five other men, who are bracketed. Can you tell what that is?—If I may see it. (It was handed to the Witness.)

Were those men who deserted or what?—For instance, this vessel sailed from New Orleans, and this last that you refer to is the certificate of the United States Consul at Havre, LORENZO DRAPER, and he states in it that PETER JOHNSON, WILLIAM HODSON, THOMAS WELSH, HENRY JOHNSON, and BENJAMIN GILLETT, have been shipped in Havre.

I suppose, in place of some other men who ran away?—I suppose shipped in the place of persons who either deserted, or for some other reason. They are persons that there shipped on the vessel. This other certificate above is the certificate of the Inspector at New Orleans—"I certify that I have examined the crew on board the ship 'Helvetia' at New York."

That is six substituted for the seven who appear to have been absent?—Yes, that is all.

There were six substituted for seven—is it not?—No, the seventh is then Inspector, that last name.

Then there were six substituted for six?—Six substituted for six.

Now, is this what you call a manifest?—No, that is a crew list.

Is it optional with the Captain to furnish a complete list, or is he compelled by law to do it?—He is compelled by law. Before he sails he has to furnish a crew list.

Can you tell me how long that law has been in operation?—I cannot.

That is the law at present?—That is the law at present; and the law in operation in 1851.

How do you know that?—Judging from the fact that they filed them in 1851.

Have you seen any law that they required a full list of seamen?—I have not.

The LORD CHIEF JUSTICE: We must assume that, from the thing being done, there was an application to do it. People would not have deposited crew lists, and those crew lists would not have been required to be kept, unless there was some law or usage requiring the thing to be done.

Dr. KENEALY: Yes, my lord, there may be a law or usage, no doubt; the question was rather directed as to whether there was any Act of Congress that rendered it compulsory.

The LORD CHIEF JUSTICE: He does not know that.

Dr. KENEALY (to Witness): Do you know anything about the coast of California?—No, nothing at all.

Mr. JOHN AVERY PARKER ALLEN, sworn.

Examined by Mr. Serjeant PARRY.

Are you Collector of Customs at New Bedford, Massachussetts, in the United States?—Yes.

Are there records kept at the Custom House of all vessels which arrive at or leave New Bedford?—Of all registered vessels, all except small coasting vessels.

Do you produce the log-book of a vessel called the 'Osprey,' which left the port of New Bedford in 1851?—I do.

How came that log-book to be deposited with you?—I applied to the owners of the vessel, who lent it to me.

Did you apply to the owners of the vessel to lend it to you for the purpose of your being called as a Witness here? Had it reference to that?—It had the second time. The first time I borrowed that book it was for another purpose.

I will simply produce this book to you if you will identify it?—Yes.

Just describe what does that purport to be?—It purports to be a daily record of the ship from the time she left New Bedford on June the 4th, 1851, until her return in October.

Until the 1st of October, is it?—Yes. (Log-book produced.)

Have you searched the records of your Office as to whether any vessel called the 'Osprey' was entered or cleared from New Bedford in 1852?—Yes, I have.

What is the result of that search?—That there was no such vessel cleared.

Have you searched for any other years besides 1852, or only 1852?—I think my search was made for 1851, 1852, 1853, and possibly 1854.

You are quite sure of 1851, 1852, 1853, and you believe 1854 also?—Yes, I am quite sure I searched.

And you found no 'Osprey'?—I found no 'Osprey.'

I believe you produce the manifest?—I do.

Of the 'Osprey'?—Of the whaling barque 'Osprey,' when she cleared in 1851, and her manifest when she returned in 1854.

Will you give the Court the whole of those, and hand them to me?—At her clearance, it is dated 3rd of June, 1851; that is by the owner; and the Captain's manifest the same day. The manifest upon her entry is upon the 1st day of October, 1854. There are two entries of each, one by the owner, one by the Captain, one entry of the vessel, and one of the cargo.

Do you produce also a list of the crew of that vessel, and the changes which took place in the crew from June, 1851, until her return in October, 1854?

Dr. KENEALY: What is the object of this? The evidence is that he was never at New Bedford.

The LORD CHIEF JUSTICE: We cannot, I think, anticipate the evidence before it comes. He certainly said—I do not want to stop any objection which you can legitimately take—that the vessel was a New Bedford vessel.

Dr. KENEALY: He said he was told that by someone else.

Mr. Serjeant PARRY: He stated most distinctly that the vessel hailed from New Bedford.

The LORD CHIEF JUSTICE: We need not discuss the effect of the evidence. He said quite enough about New Bedford to entitle them to give this evidence.

Mr. Serjeant PARRY: It is what Dr. KENEALY himself said about it.

By the JURY: Page 73 (Vol. IV.).

Mr. Serjeant PARRY: That is so.

Did you produce the lists of the original crew in 1851, and the subsequent lists of the changes in the crew that took place between 1851 and 1854?—I did.

Mr. Justice LUSH: Are they from the Custom House?—I produce them from the files of the Custom House.

Your own Custom House at New Bedford?—Yes.

Mr. Serjeant PARRY: How long have you been engaged in the position you occupy as Collector of Customs there?—Since March, 1870.

In this year, did Mr. WHALLEY call upon or see you at New Bedford?—In this present year, he did.

Tell us the date?—I have nothing to fix the date exactly.

About?—I should think last July, or the beginning of August.

I will only ask, you saw him?—I saw him.

How long was Mr. WHALLEY with you?—I should think four hours and a-half or five hours.

Did you see him more than once?—I saw him only that day, and I think he was not out of my sight during that time.

Mr. Justice LUSH: Was this at the Custom House?—It is of the time, my lord, I went to the City Library with him; we have a City Library at New Bedford.

Cross-examined by Dr. KENEALY.

How long have you been in England?—I think I arrived on the 2nd of October. I arrived on a Thursday. I am not sure whether the 2nd or 3rd in London.

You have been there engaged in New Bedford only since March, 1870?—That is all.

Had you any knowledge at all of Custom House matters before then? I mean, was your previous occupation at all in Custom House business?—No, it was not.

You were a landsman?—Yes.

Did Mr. WHALLEY and you speak about the 'Osprey'?—Yes.

Did he say that the 'Osprey' could not be the one?

Mr. Serjeant PARRY: I do not know, my lord, whether what Mr. WHALLEY said is evidence. Mr. WHALLEY might have given evidence himself.

Dr. KENEALY: Mr. WHALLEY challenged evidence; he was put into the box and he was not cross-examined. I do not know the object of this, unless the object of this is to insinuate that Mr. WHALLEY came back and made some wrong report of what passed.

The LORD CHIEF JUSTICE: That must have occurred only to a very ingenious mind. It certainly never occurred to me.

Mr. Serjeant PARRY: Nor to me, I am sure.

Mr. HAWKINS: And certainly not to me.

The LORD CHIEF JUSTICE: The way in which I applied it was this—I may be right or wrong, but the impression produced on my mind was to say this—that Mr. WHALLEY had all the same means of inquiring, and availed himself of them; therefore, knew all that this gentleman tells us now; and therefore, if there is anything untrue in the statement the Witness is now making he would know it.

Mr. Serjeant PARRY: That was the sole object of putting the question. I must distinctly say I meant no insinuation against Mr. WHALLEY of any sort or kind.

The LORD CHIEF JUSTICE: I certainly did not suppose that any insinuation was made that Mr. WHALLEY had made an untrue statement.

Dr. KENEALY: Is that question objected to, my lord, as to what Mr. WHALLEY said to him with regard to this 'Osprey'?

Mr. Serjeant PARRY: Certainly.

The LORD CHIEF JUSTICE: Certainly, as a most objectionable question. If they had gone into the inquiry made by Mr. WHALLEY, and asked anything as to what Mr. WHALLEY had asked, and the Witness answered, then you would be fully entitled to complete the conversation by anything that had been omitted.

Mr. Justice LUSH: You say there is a crew list. You have not called attention to anything of that.

Mr. Serjeant PARRY: I was going to call Captain MCCOMBER next.

CAPTAIN THURSTON MCCOMBER was called.

Dr. KENEALY: I will take your lordships' opinion now whether Witnesses who were here since October last, like this last Witness and Captain MCCOMBER, are to be called as rebutting Witnesses? I understood this case was adjourned by your lordships to enable them to bring Witnesses from America to give rebutting evidence, and it was never suggested that there were Witnesses of that kind in England whom they could call.

The LORD CHIEF JUSTICE: Oh dear, yes; Mr. HAWKINS suggested it, and I remember there arose a great shout of triumph on your side of the Court that he had been led by your opening of the New Bedford 'Osprey' to send to America for the Captain and some other Witnesses who were here with the log, and that was received with very considerable laughter.

Dr. KENEALY: Certainly not by me, my lord. I made no shout of triumph over it.

The LORD CHIEF JUSTICE: I saw you heartily laughing, Dr. KENEALY: it might have been at something else.

Dr. KENEALY: I am not conscious to myself that I laughed at it at all, and I do not believe I did.

The LORD CHIEF JUSTICE: However, I saw laughter going on.

Mr. Justice MELLOR: Looking at it in this light I do not think your objection will do. Until other Witnesses could be called there would be no use in calling Captain MCCOMBER. It might be said, it has no relevancy to this Case, and therefore it was essential that they should get Witnesses from America in order to make this Captain's evidence relevant; and therefore, although I agree with you as a rule when the Witnesses are here they ought to be called, but until the case is in such a condition they cannot be, but may be called at any time.

The LORD CHIEF JUSTICE: I was perfectly apprised of the fact, by Mr. HAWKINS's statement, that he had those two Witnesses; and if he had said at the time "Shall I call them now, or shall I present to the Court the whole body of evidence on this part of the Case when I have got the whole from America?" I should have said "As a matter of convenience it is much better to adjourn until the evidence is complete, and not let us have it in a fragmentary form." I recollect distinctly Mr. HAWKINS saying that he had them. It was better, however, to defer calling them until we could have the whole body of evidence on our note.

Dr. KENEALY: The objection does not apply to Captain MCCOMBER alone, who is to follow this Witness, but we have a list of other Witnesses who were in London at the time of the adjournment, and those Witnesses, I think, ought to be called.

Mr. Justice MELLOR: Some links of the chain were wanting, and you must have the whole chain complete in order to make any Witnesses proper to be called at that time.

Dr. KENEALY: Very well, I simply call your lordships' attention to it.

CAPTAIN THURSTON MCCOMBER, sworn.

Examined by Mr. Serjeant PARRY.

Do you reside at Fair Haven, New Bedford, Massachussetts?—I do.

Were you formerly Captain of the 'Osprey'?—I was.

Are you now retired or engaged in any employment?—No particular employment.

The 'Osprey' was a whaling barque was it?—Yes.

Belonging to the port of New Bedford?—Yes.

Did you command her from June, 1851, to October, 1854?—I did.

Now, she left the port of New Bedford we hear in June, 1851?—Yes.

And from that time until October, 1854—was she during the whole of that time on a whaling voyage?—She was.

Would you be good enough to look at the log book which that last gentleman has produced? (It was handed to the Witness.) Is that the log book of the 'Osprey' you commanded?—It is.

I believe it was kept by the mate, Mr. CHAPMAN?—Yes, WILLIAM CHAPMAN.

Can you tell us where the 'Osprey' was on the 23rd April, 1854?—"Left Table Bay, Cape of Good Hope, the 23rd April, 1854."

Were you at anchor there?—We had been lying there some fortnight.

During that voysge was the 'Osprey' ever at all at Rio Janeiro or near to it?—When I left New Bedford I sailed from the North Atlantic into the South Atlantic and down the coast of South America and round the Cape of Good Hope, and remained in the Indian Ocean until about the time I came back again, and went into the Cape of Good Hope in April, 1854. I remained in the Indian Ocean during that time.

The LORD CHIEF JUSTICE: From what date were you in the Indian Ocean?—In the Indian Ocean almost the whole time. I

passed round the Cape of Good Hope, I think, about January, 1853, and remained round there until April or March, 1854. Then on my return home——

Mr. Serjeant PARRY: You were never at Rio?—No.

Or off the coast?—When I went away in 1851, I went down the coast but not after that.

I believe you were never at Melbourne at all?—No.

Mr. Justice LUSH: What was her tonnage?—I think it was 237, if I remember right.

The LORD CHIEF JUSTICE: Ship or barque?—Barque.

Mr. Serjeant PARRY: We have the lists of the crew here. Do you remember your crew? Was there any person of the name of JEAN LUIE—a steward on board the 'Osprey'?—There was not.

Or a seaman at all on board of that name?—None by that name.

There is the log book and there is the list, and you say there was no such person?—I know there was no person by that name.

Mr. Justice LUSH: Have you seen LUIE here?—I think I saw him here one day in Court.

Did you know him?—No, I did not. I never saw him before that I know of.

Was he one of your crew?—Never.

The LORD CHIEF JUSTICE: Just call him in.

The USHER: (after a pause) LUIE is not in Court and cannot be found, my lord.

The LORD CHIEF JUSTICE: I daresay he will be here directly. In the meantime let the business proceed.

Mr. Serjeant PARRY: I may mention that it would be advisable that he should be here with reference to some other Witnesses?

Mr. Justice MELLOR: He was here this morning.

The LORD CHIEF JUSTICE: Has Dr. KENEALY anything to ask the Witness?

Mr. Serjeant PARRY: He has declined.

Dr. KENEALY: I do not say this New Bedford 'Osprey' was the 'Osprey.'

Mr. Serjeant PARRY: What you say now is another thing.

A JURYMAN: Was there any one of the crew of the name of KARL ANDERSON?—No, I never heard of it.

No such name?—No such name.

Mr. Justice LUSH: What nationality was your vessel the 'Osprey,' an American?—She was.

American built?—Yes; built in Baltimore, I think.

The LORD CHIEF JUSTICE: Built in Baltimore, was she?—I think so.

The LORD CHIEF JUSTICE: However, she was an American-built vessel, was she?—She was an American-built vessel.

Did your vessel, whilst you were in command of her, ever pick up a boat-load of shipwrecked crew?—No.

Mr. WILLIAM AISH DAVIS, recalled.

Examined by Mr. Serjeant PARRY.

You are one of the Shorthand Writers in this Case?—I am.

And you have been sworn before, I believe?—Yes.

Were you present during Dr. KENEALY's opening speech?—I was.

Do you remember Dr. KENEALY in the course of his speech alluding to the 'Osprey'?—I do.

And to his intention of calling a Witness to prove her sailing?—I do. I think it was the mate of the 'Osprey' hailing from New York.

You heard Dr. KENEALY say that?—Yes.

When Dr. KENEALY was saying that did you hear the Defendant say anything to him?—He turned partly round to Dr. KENEALY and said, "No, New Bedford," and Dr. KENEALY adopted the correction.

The LORD CHIEF JUSTICE: He had better have the report before him.

The WITNESS: I did not put it in that way upon the notes, because I considered the Defendant was instructing his Counsel; but I have not seen the report since it was transcribed. (The report was handed to the Witness). Shall I read how it is here, my lord?

The LORD CHIEF JUSTICE: Do so, if you please.

The WITNESS (reading from page 73, Vol. IV.): "The Lord Chief Justice: I suppose, then, you have no objection to tell us what 'Osprey' she was? Dr. KENEALY: She was an American. The Lord Chief Justice: From what port? Dr. KENEALY: From New York—New Bedford, I believe, or some port attached to New York." It was when Dr. KENEALY said "From New York" that the Defendant interposed and corrected him.

Cross-examined by Dr. KENEALY.

Are you prepared to say that he did not add, "or some port attached to New York"?—I do not think he did.

Are you prepared to say he did not?—I did not hear it; and if he did, it must have been in a very different tone of voice from what he said New Bedford in.

If you heard that said, why did not you insert it in your notes?—Because, as I have said, I considered it an instruction from your client to yourself.

Was that your only reason for not putting it in the notes?—That was my only reason.

Mr. LUCIUS CAMPBELL DUNCAN, sworn.

Examined by Mr. HAWKINS.

You are a member of the Bar of New York?—Yes.

And an admitted member of the Supreme Court of the United States?—Yes.

Will you be good enough to tell me as regards Staten Island. You were in Court yesterday when Mr. PURCELL was examined with reference to within what district Staten Island is. Will you tell us how that is?—Mr. PURCELL'S explanation of the fact and the law was very clear and very accurate. His statement was to the effect that Staten Island formed a portion of the collection district of New York.

And that is so?—That is the fact.

You heard questions put yesterday also with reference to when a vessel coming from New York comes within the jurisdiction of the Custom-House Officers?—Yes, I did.

Will you be good enough to tell us what the law is upon that?—A vessel approaching the coast of the United States comes within the jurisdiction of the Officer of Customs when she comes within the distance of four leagues from the coast.

Mr. Justice LUSH: Do you mean any part of the coast?—Any part of the coast, my lord.

Mr. HAWKINS: Have you had your attention directed to the mark of JEAN LUIE on the map as to where the 'Osprey' mentioned by him was?—I have not.

Will you be good enough to look at it? You see where it is?—Yes.

Would a vessel on that spot be liable to the Customs of New York?—She could not escape being boarded. That is far within the limit which Custom-House Officers board vessels in as a rule.

Is there according to American law any law which regulates the way in which the name of a vessel is to be painted on the vessel herself?—Yes.

What is the law with regard to that?—The names of American vessels are required by the law to be painted in white paint upon a black ground in letters of not less than three inches in size, on the stern of the vessel, and not only the name of the vessel itself, but the name of the port to which she belongs.

Is there any law which requires the deposit of a crew list?—Yes. There is that law.

What is the law upon that subject?—I am not prepared to give you the words of it, but if you will allow me, I will refer to the books.

It is required by the Custom House?—It is required by law. If you desire it, I can give you the words.

You can give it very shortly?—It is an Act of Congress of the 28th of February, 1803, the 4th paragraph: "Before a clearance be granted to any vessel bound on a foreign voyage the master thereof shall deliver to the Collector of the Customs a list containing the names of the places of birth, and residences, and a description of the persons who compose his ship's company, to which list the oath or affirmation of the Captain of the ship annexed, that the said list contains the names of his crew, together with the places of their birth, and residences, as far as he can ascertain them."

Is there any law which requires a vessel leaving New York to take a pilot on board?—There is a law requiring a vessel to take a pilot. That is the law of the State of New York, and not a law of the Federal Government.

Dr. KENEALY: Where were you reading from?—Page 603 of 'BRIGHTLY'S Digest.'

Mr. HAWKINS: Is there any law which regulates the register of foreign-built vessels as American vessels?—The law relating to the registration of foreign vessels as American vessels I may more accurately state in this way: that foreign vessels cannot be registered as American vessels, save in three instances.

What are they?—The first case is that of vessels which shall have been captured in war by a citizen or citizens of the United States, and shall have been lawfully condemned as prizes. Such a vessel may be registered as an American vessel. The next class of vessels comprises those which shall have been declared by law to be forfeited by the violation of the revenue laws of the United States; and the third class of vessels foreign-built which may become or be registered American vessels are those which shall have been wrecked within the United States upon the coast, and shall have been purchased by a citizen or citizens of the United States, and shall have been restored to the condition of sea-going vessels by a citizen or citizens of the United States, provided in such cases the expenses of the repairs shall equal three-fourths of the cost of the vessel, including the repairs. Only in such instances of foreign-built vessels can they receive American registers and become American vessels.

The LORD CHIEF JUSTICE: Cannot they in the case of purchase and sale?—No, my lord.

Supposing a British-owned vessels in American waters, and the British owner does not wish to bring her home, and sells her to an American citizen; could not that be registered?—The policy and the laws of the Government are opposed to and prohibit the sale of foreign-built vessels to Americans.

Mr. HAWKINS: Without an Act of Congress, I think it is?—I was going on to say that while a legal sale may be made to an American Citizen, as between the purchaser and seller of the ship, such ship could not receive an American register, and

would not be entitled to the benefits and privileges of an American ship.

Except by Act of Congress?—A special Act of Congress.

The LORD CHIEF JUSTICE: I suppose it is for the protection of the national shipping?—The ship-building interests and trade.

Mr. HAWKINS: Is there any law with reference to the change of the name of American vessels?—Yes.

That is to say, supposing a vessel changed her name?—A vessel cannot change her name, nor can the master or owners of a vessel change her name, except by the agency of an Act of Congress. There must be a special Act of Congress passed to enable a ship's name to be changed.

Is that a matter of Federal Law, the granting of the register?—It is exclusively a matter of Federal jurisdiction.

Not a matter of State law?—Not at all. The legislation of the State does not extend to that subject.

Have you carefully searched to see whether any Act of Congress exists authorizing the change, for instance, of the name of 'Helvetia' to 'Osprey'?—I have made careful search.

The LORD CHIEF JUSTICE: As I understand, the case put by the Witness LUIE would require an Act of Congress for the change of the owner of the ship, because, according to his account this was a Swedish or Norwegian vessel—I think he said Swedish.

Mr. HAWKINS: Is there any Act of Congress authorising that?—Save in these three cases I have mentioned, the thing cannot be done.

The LORD CHIEF JUSTICE: In the case of the 'Helvetia'?

Mr. HAWKINS: In the case of the 'Helvetia'; from the 'Helvetia' to the 'Osprey,' or authorizing the change of name from 'Helvetia' to 'Osprey'?—There is no Act of Congress authorising the change of name at all.

Your search, I believe, extended over many years, ending in 1855?—A great many years, extending back perhaps to the first years of this century down to the present time.

Cross-examined by Dr. KENEALY.

I suppose you have no practical knowledge yourself of the regulations of the Customs at Staten Island or New York?—If you mean by practical that I have had to do with them personally.

That is what I do mean?—I certainly have not. I know the statutes and laws of the United States.

You have never heard, I suppose, that the laws are sometimes broken? (Laughter)—Yes, undoubtedly, very often.

Can you tell me when it was that Staten Island came within the jurisdiction of the Custom House of New York?—I am not prepared to give you the date of a circumstance of that kind.

You cannot tell when?—I can only tell you in a general way.

You can tell me or you cannot?—Certainly not 25 or 30 years ago.

Are you prepared to say it is so long ago as that?—I am prepared to say that to the best of my knowledge and belief it is; but I have no dates respecting that circumstance.

At all events it is not longer than that in your judgment?—It may be very much longer. I do not know any reason why it should not have come within the jurisdiction or power or control of the New York Custom House as long ago.

Two hundred years, perhaps?—The beginning of this century.

And have you any knowledge at all either way?—Certainly, a knowledge of the fact that Staten Island is within the New York Custom House jurisdiction.

But can you refer me to anything that will substantiate your assertion?—I have no chronological data before me—no works of historical authority.

I may take it that you cannot tell me?—No, I may say distinctly that I know as a fact that at least twenty-five years ago, within my own personal knowledge, Staten Island was within the New York area.

Were you there twenty-five years ago?—I was.

In what year?—I went to New York first as a lad in 1815.

You were there in 1815, when you were a lad?—I think so.

The LORD CHIEF JUSTICE: I do not understand that he went by way of Staten Island?—I happened to go that way, my lord.

Dr. KENEALY: What is your knowledge then?—My personal knowledge began at that time, and has continued ever since.

You went to New York, passing Staten Island?—I did.

What took place?—I cannot tell you what took place. I had no expectation of being called upon to tell you what took place either then or subsequently. I went through the Narrows and passed by Staten Island on my first arrival at New York.

That is all you know about it?—I know we were boarded and brought to at the usual landing-place.

Where had you been coming from?—From New Orleans.

And did you come within the Narrows?—Oh, yes.

Did you pass Quarantine Point?—Yes, I did. Allow me to say that I passed that which is now the Quarantine Point; but I do not recollect that at that time there was a Quarantine Station.

The LORD CHIEF JUSTICE: I see there are three marks upon the chart.

Dr. KENEALY: I have only seen one.

The LORD CHIEF JUSTICE: If you look further out at sea you will see two more.

Dr. KENEALY: A great deal depends upon the date of this chart.

At all events did any Officer of Health board you until you had passed through the Narrows?—I am not prepared to answer. do not recollect.

Come, come. I do not expect you to, but have you any doubt that you were not boarded by any Officer of Health when you passed through the Narrows?—Speaking of the first time of going to New York as a lad?

At the time you are referring me to?—I have gone through the Narrows fifty times since.

Will you tell me some time before 1854 when you passed through the Narrows? Are you prepared to swear that you were boarded by any Quarantine Officer until you passed through the Narrows? Now that is a very simple question?—No, the Quarantine Officers do not board vessels outside the Narrows as a rule. They may do so in exceptional cases, but I do not happen to know the customs and practice of the Quarantine Officers; but my recollection is general—that they did not board you until you came up off Tomkinsville pier.

You say you were coming from New Orleans?—Yes.

But is the way from New Orleans to pass through the Narrows?—Coming from sea it is.

Was not it after the Officer of Health boarded you that the Custom-House Officer came on board?—You are speaking now of what occasion?

I am speaking of the occasion you referred me to yourself—1845?—I do not recollect anything about the boarding by the Quarantine Officers at that time. I simply recollect that we were boarded, as far as I recollect, by Custom-House Officers.

The LORD CHIEF JUSTICE: Any time prior to 1854, as I understand.

Dr. KENEALY: Yes. I will be content with any time prior to 1854.

Did you pass between 1845 and 1854 through the Narrows?—Yes, I did.

Do you remember on any of those occasions being boarded by the Officers of Health?—Yes.

Was not that after you had passed through the Narrows?—I think always the Officer of Health boards after you pass through the Narrows.

Then was not it after the Officer of Health had given you a clean bill, or reported well, that the Custom-House Officer came on board?—I am not going to speak to any particular instance, but my impression about the Custom Act is a mere impression of what my own experiences and observations have been.

I am asking your experience and not your impression?—I should form my impression on my experience as well as I could recall it.

This is a matter that must be well known?—Quite well.

You say you passed several times between 1845 and 1854 through the Narrows. I want to know from you whether you will say that any Custom-House Officer boarded the vessel until after the visit of the Officer of Health?—As far as my recollection serves me, the Custom-House Officer boards vessels before the Health Officers come on board.

That is your recollection?—Yes.

The Custom-House Officer comes first, and the Health Officer afterwards?—That is my recollection. I am not prepared to say that I am very clear or distinct, or decided about it; pretty near a simultaneous occurrence.

Pretty near a simultaneous occurrence—both boats might put off together?—They may.

But is it not a fact that the Custom-House Officers will not come on board, and do not come on board until the Officer of Health gives a clean bill?—That I do not know. There is no law determining and requiring the thing to be done in that order.

The LORD CHIEF JUSTICE: No law to regulate it?—None whatever, my lord.

Dr. KENEALY: You say that it requires an Act of Congress to change the name of a ship?—It does.

The LORD CHIEF JUSTICE: A foreign ship?—A foreign ship.

Dr. KENEALY: Do you mean to say that it requires an Act of Congress to change the name of a foreign ship?—Yes, I do distinctly.

Have you any authority for that assertion?—Yes; I can refer you to the statute.

I should like to see the statute.

The LORD CHIEF JUSTICE: As I understand, two things are necessary with regard to a foreign ship. The policy of the American law is to prevent foreign ships becoming American ships, in order to encourage the national shipbuilding; but if you apply to Congress, inasmuch as an Act of Congress is supreme, you may get an Act authorising the transfer of the property in a foreign vessel to an American citizen, and in like manner you may get the name of the vessel changed to any name you please.

Dr. KENEALY: That is what I want. What is the Act of Congress that requires that?—Allow me to state that the law is a general one, and the fact is deducible from the general tenour of the Act itself.

Then there is no specific provision in the Act requiring that. It is a deduction you draw?—I think I shall be able to point out to you the specific portion of the Act applying, and I wish to call

your attention, if you will allow me, to an enactment of Congress of the 15th of March, 1856.

That will be of no use to me.—But it will have an application if you will allow me to read it.

I do not want your Acts of Congress for 1856.

The LORD CHIEF JUSTICE: But an Act of Congress of 1856 may throw some light on what was the law prior to the passing of that Act.

Dr. KENEALY: In that view it may be valuable.

The LORD CHIEF JUSTICE: Otherwise I agree with you. What does it say?—In 1856 it was provided that the Secretary for the Treasury should be authorised to permit the owner or owners of any vessel to change the name of the same when in his opinion there should be sufficient cause for so doing, and he was to establish by this Act such rules and regulations as he should deem proper for that purpose. The passing of that enactment would imply that the general law prohibited the change of names by the Secretary of the Treasury, or by anybody else, and the power was given him by this Act to authorise such changes.

Mr. Justice LUSH: Does that apply to American or foreign ships?—It is only American vessels that can change their names which are within American jurisdiction.

Dr. KENEALY: Does that authorise the Secretary of State to draw up certain rules and regulations under which American ships may change their names?—The law authorises such changes to be made when the Secretary of the Treasury should see fit to promote them in 1856.

Does that apply to American ships?—That applies exclusively to American ships.

Had you any authority for your implication that a change of name of a foreign ship requires a special Act of Parliament?—I was going on to say in 1859 this provision giving this power to the Secretary of the Treasury was repealed. The power was taken from the Secretary of the Treasury authorising any change of name in a vessel, and it would go naturally to where it belonged at first, Congress itself.

The LORD CHIEF JUSTICE: What law is there which prohibits the purchase by an American citizen of a foreign owned vessel?—I will give you the text of the law if you will allow me to look for it?

Yes, do so.

Mr. HAWKINS: Will you refer to page 824, paragraph 3?—I will read the paragraph: "Every ship or vessel hereafter to be registered (except as hereinafter provided), shall be registered by the Collector of the district which shall be comprehended the port to which such ship or vessel shall belong at the time of her registry." That paragraph does not meet the case in his lordship's question.

Can you find an Act passed on the 31st of December, 1792?—I have the Act before me. It is a long Act, and it provides for the case stated by the Lord Chief Justice; but I am not able on the spot to put my hand on the paragraph.

Dr. KENEALY: Now have you ever known an instance where a special Act of Congress gave power to change a name?—I have.

A foreign ship?—I cannot speak to foreign ships.

The LORD CHIEF JUSTICE: It will not apply to foreign ships unless converted into an American. There is no law to prevent a British owner changing the name of his ship although it is in American waters; the law would not affect his freedom in that respect, but it is with respect to American vessels.

Mr. Justice LUSH: You cannot register at all until you have an Act of Parliament. You cannot get an American registered except under one of these contingencies. That was the case with our law.

By the JURY: Can a foreigner be registered as owner or part owner of a vessel in America?—No, he cannot; the American register is not granted to foreigners.

Dr. KENEALY: You cannot find that implication you have been looking for so long. Can you or not? You told me something or other was implied. Can you give me any authority for the implication?—No doubt I did so.

The LORD CHIEF JUSTICE: What we want is an Act which enacts that foreign vessels cannot become the property of an American citizen without a special Act.

Mr. HAWKINS: Here are some of your notes.

Dr. KENEALY: Are these made by you?—No, not made by me but from my notes.

Mr. Justice LUSH: It is only an index to enable him to refer to a page. What objection can there be in that?

Dr. KENEALY: Your lordship will do me the justice to remember that I have not seen it, and sometimes if you allow the Witness to look at memoranda made by other people, in the course of cross-examination, it may lead to something improper to be done.

Mr. Justice LUSH: It was our law at the very outset that no vessel should be registered except by an English owner.

Dr. KENEALY: But as far as I know the Maritime Law of this country that never went the length of saying, if you change the name of a foreign ship you must have a special Act. That would cost £500 or £600.

The LORD CHIEF JUSTICE: You must re-register. The expense is one reason for not changing the name.

Dr. KENEALY: Yes, one reason why Captain BENNETT did not go to Congress probably.

The WITNESS: It is an Act of Congress of 31st December, 1792.

Dr. KENEALY: Where is the enactment about this implication you speak of?—The implication I find in another enactment which I read you.

That one of 1856 is the only authority you can cite for what you say?—The Act and its repeal.

The LORD CHIEF JUSTICE: Now give us a section of the Navigation Act.—The first paragraph is in these words—"Ships or vessels which shall have been registered by virtue of the Act, intituled 'An Act for registering and clearing vessels, regulating the coasting trade, and for other purposes,' and these which after the last day of March next shall be registered pursuant to this Act and no other (except such as shall be duly qualified according to law for carrying on the coasting trade and fisheries or one of them) shall be denominated and deemed ships or vessels of the United States, and entitled to the benefits and privileges appertaining to such ships or vessels, provided that they shall not continue to enjoy the same longer than they shall continue to be wholly owned and to be commanded by a citizen or citizens of the said States." Therefore a ship to be entitled to be registered as an American ship must be entirely owned by an American.

The LORD CHIEF JUSTICE: That is our law.

Mr. Justice LUSH: I think you will find soon afterwards she must have been built in America, or repaired to a given extent in America.—That I have stated to be the law precisely.

It is the same Act?—In the same Act, but I have not been able to put my finger on the paragraph.

The LORD CHIEF JUSTICE: I suppose we shall find the Act itself.

Mr. HAWKINS: I am told they are in the British Museum.

The LORD CHIEF JUSTICE: Or would be in the libraries of the Inns of Court.

Dr. KENEALY: We cannot get it from you, as I understand.—I can give you the entire Act if I had time to read it.

The LORD CHIEF JUSTICE: Is the Act here?—It is here.

I did not know that—the entire statute?—It is all here.

Dr. KENEALY: If the Act is there we do not want to go to the British Museum for it.

The LORD CHIEF JUSTICE: This is a digest?—It contains the laws on the subject.

The LORD CHIEF JUSTICE: Section 2. "Ships or vessels built within the United States whether before or after the 4th July, 1776, and belonging wholly to a citizen or citizens thereof or not built within the said States but on the 16th day of May in the year 1789, belonging to and thenceforth continuing to belong to a citizen or citizens thereof, and ships or vessels which may hereafter be captured in war by such citizen or citizens, and lawfully deemed his prize or which have been or may be admitted to be forfeited for a breach of the laws of the United States, being wholly owned by a citizen or citizens thereof, and no other may be registered as hereinafter directed, provided that no such ship or vessel shall be entitled to be so registered, or if registered to the benefits thereof if owned in whole, or in part by any citizen or citizens of the States who usually resides in a foreign country during the continuance of such residence unless such citizen be in the capacity of a Consul of the United States or an agent for and a partner in some house or trade or co-partnership consisting of citizens of the said States actually carrying on trade within the said States.

Dr. KENEALY: Now have you any authority for the proposition that they claim jurisdiction for all those number of miles?—Yes.

The LORD CHIEF JUSTICE: Four leagues?—I can refer you to that, the Act of Congress of the 2nd March, 1799, and the 76th paragraph. In page 333 of the first volume of 'BRIGHTLEY'S Digest' you will find the following clause. "Every man or other person having the charge or command of any ship or vessel belonging in the whole or in part to a citizen or citizens, inhabitant or inhabitants of the United States, laden with goods as aforesaid and bound to any port or place within the United States shall, on his arrival within four leagues of the coast thereof or within any of the bays, harbours, ports, rivers, creeks, or inlets thereof, upon demand, produce a manifest or manifests in writing which such master or other person is required as aforesaid to have on board his said ship." That applies, I believe, to your question?

Dr. KENEALY: That applies to American citizens?—It applies to all vessels coming into American ports, clearly.

Does that apply to American ships?—It applies, on looking at the terms of this clause again, to this ship; but the law would not be less favourable to foreign ships than to American ships, and the case of foreign ships is provided for elsewhere in the Act.

They cannot extend their jurisdiction as far as they please; three miles is the English jurisdiction?—Quite so.

Do you think Americans can claim twelve miles over all people?—No.

That applies merely to their own subjects?—Well, allow it to be so.

What?—I am not prepared to say it does not apply exclusively to American citizens.

Is it not almost the universal practice amongst nations that one league, or three miles, is the maximum?—Yes.

Mr. McMAHON: The whole of this matter relating to these ships is stated very clearly in the last edition of KENT'S 'Commentaries,' under the head of 'Custom House documents.'

Mr. Justice LUSH: What is the date of that?
Dr. KENEALY: 1867.

Mr. WALTER MILLER, recalled.

Further examined by Mr. Serjeant PARRY.

I believe you were an attorney practising at Melbourne?—I was.

Were you at Melbourne in 1865, during the whole of the year?—The greater portion of the year.

Do you know Burke Street, Melbourne?—Very well, indeed.

Is there a Burke Street there?—There is a Great Burke Street and a Little Burke Street.

The LORD CHIEF JUSTICE: There is no Burke Street without the addition of Great or Little, is there?—No other street named Burke Street, with the exception there is East and West; it is Great Burke Street, East and Great Burke Street, West.

Mr. Serjeant PARRY: Still Great Burke Street and Little Burke Street?—Yes.

Did you know the person who resided in Burke Street in 1855?—Yes.

Was there any person of the name of McCARTHY?—There was no private individual of the name of McCARTHY.

Your attention has been called to this before, and to the statement made by the Witness LUIE?—I heard him examined.

There was no such person residing in which street?—Great Burke Street.

Mr. Justice MELLOR: Or Little Burke Street?—Or Little Burke Street.

Mr. Serjeant PARRY: He was described as a very rich man?—A man of substance, and his house was very well known.

Was there any such person residing in Great or Little Burke Street?—No.

Mr. Justice MELLOR: In what year?—1865.

Mr. Serjeant PARRY: Did you know the street the whole of 1865?—I was in the habit of going down it two or three times a day.

During the whole of 1865?—Yes.

What was the character of the houses there—mainly shops?—Great Burke Street was one of the principal streets in Melbourne for shops and hotels and restaurants. There were only about six private houses in it.

Did you know the names of the persons who occupied those six private houses?—There was MURPHY, a solicitor, Mr. TOMPKINS, a solicitor, Mr. MARK MOSS, Mr. BAGGOT—he was a surveyor—and Mr. TERRY, an architect, and the Australian Trust Company had offices there.

And was there a physician, do you remember?—Dr. McKENZIE.

All the rest of the houses were business houses?—Business houses.

Neither in the private houses nor the business houses could you know anything of a person of the name of McCARTHY?—I did not.

I think you produce a Melbourne 'Directory,' do you not?—For 1865.

You have looked through that, have you not?—I have under Burke Street, Little Burke Street, and McCARTHY, and McARTHUR.

And do you find any person of the name of McCARTHY?—None residing in Burke Street.

Mr. Justice LUSH: In either Burke Street?—Neither in Great or Little Burke Street.

Mr. Serjeant PARRY: How is Little Burke Street occupied?—By Chinese and persons of low character.

Persons in a humble way of life?—Persons in a humble way of life.

Cross-examined by Dr. KENEALY.

I suppose you know Piccadilly in London?—Well, I have been there.

Now, is Great Burke Street larger than Piccadilly?—No, not so large.

What?—Not so large.

Is it the main street in Melbourne?—It is one of the main streets in Melbourne.

Is it not the principal street in Melbourne?—No.

What would you call the principal street?—Collins Street, and Elizabeth Street.

Collins Street and Elizabeth Street you say are more principal streets than Great Burke Street?—Certainly, from a business point of view.

I am not talking of a business point of view. Piccadilly is not a business kind of street; there are a great many private houses there?—Well, I am not sufficiently acquainted with Piccadilly.

The LORD CHIEF JUSTICE: Until you come to the upper part, it is a business street.

Dr. KENEALY: There are not a great many merchant's offices in Piccadilly, are there?—I cannot say.

Do you know all the people in Great Burke Street?—Well, the principal portion of them of any importance.

Are you prepared to swear that McCARTHY did not keep in 1865, a place of business in Great Burke Street?—I am prepared to swear there was no person of the name of McCARTHY, who was a gentleman of independence, living in Burke Street, in 1865.

Are you prepared to answer my question or not? My question is, are you prepared to swear that persons of the name of McCARTHY had no place of business in 1865 in Burke Street?—Yes, I will swear that.

You will swear it?—That there was no person of the name of McCARTHY in business in Great Burke Street in 1865.

Now, I will give you the business—a provision dealer and merchant?—Refer to the 'Directory.'

I refer to you. I know nothing about the 'Directory.' I give you that, and ask you whether you will pledge your oath?—I will pledge my knowledge. There was no person of the name of McCARTHY.

Your knowledge?—Yes.

How long where you living in Melbourne?—I have known Melbourne ever since 1853.

How long were you living in Melbourne?—Off and on during the whole of those years, passing backwards and forwards.

Where was your place of business?—In Albery and Deniliquin, and I left there to go to Melbourne. I came to Melbourne in the summer time of 1864.

Albery and Deniliquin are several hundred miles away from Melbourne are they not?—About two hundred.

Not more?—Not more. Deniliquin is about 210, and Albery about 160.

And you did not go up into Melbourne?—About every three or four months. My wife and family were living there.

And how long did you stay?—Sometimes a week and sometimes a fortnight.

The LORD CHIEF JUSTICE: You began to settle there in 1864?—I began to settle there in 1864.

Dr. KENEALY: You took up your residence there in 1864?—Yes.

When did you leave it?—I left Melbourne in 1871.

Did you continue from 1864 to 1871 in Melbourne?—Yes.

Are you sure that Deniliquin is not upwards of 300 miles from Melbourne?—I am positive of it. I have travelled through it seven or eight times a year from there; and it is 50 miles from Deniliquin to the Murray, and about 110 miles from Echuca to Melbourne by rail.

Mr. Justice LUSH: When you were examined before you said you first saw Castro in 1850, at Deniliquin?—1859.

Can you tell me what time of the year?—It was about September, I think, in the spring of the year.

The LORD CHIEF JUSTICE: I thought you said 1860?—1859, my impression was.

Mr. Justice LUSH: At the Police Court?—At the Police Court.

Your impression is September, 1859?—1859.

CAPTAIN THURSTON McCOMBER, recalled.

The LORD CHIEF JUSTICE: The Witness, JEAN LUIE, is here, and the question is whether he was ever steward or mate on board your ship?—I never saw him till I saw him in Court to my knowledge.

CAPTAIN WILLIAM THOMAS HAYNES, sworn.

Examined by Mr. HAWKINS.

Are you the commander of the General Steam Navigation Company's vessel called the 'Belgium?'—Yes.

Plying between London and Ostend?—Yes.

Were you commander of that vessel in the month of July last?—Yes.

And were you her captain on the voyage she made from Ostend to London on the 4th and 5th July?—Yes.

Starting on the evening of the 4th and arriving on the morning of the 5th?—Yes.

Can you tell me what time did the vessel leave Ostend?—Half-past eight in the evening.

That is on the evening of Friday, the 4th July?—Yes.

And when did you arrive in London?—Saturday the 5th, at half-past nine in the morning.

That is off St. Katherine's Wharf?—Yes.

You have your log setting forth these hours and the time of your leaving, with you?—Yes.

You need not refer to it unless required. Did you bring over chief cabin passengers as well as others?—Yes.

Will you be good enough to look at the JEAN LUIE who sits there and tell me whether he was passenger on board your vessel?

JEAN LUIE: Me!

The WITNESS: I do not recollect ever seeing him on board. I saw him yesterday with this gentleman in the luncheon room, but I never saw him before.

Mr. HAWKINS: You had seen a photograph of him?—Yes.

Were you also captain of the 'Belgium' on her previous voyage?—Yes.

Did you ever see JEAN LUIE on board the vessel coming from Ostend to London?—Not to my knowledge. I do not recollect him.

Is it your practice to enter in some book, from which you take the tickets, the names of the different persons?—Yes, occasionally.

The LORD CHIEF JUSTICE: What?—Sometimes. Sometimes circumstances will not admit of it.

But is it your general practice?—Yes.

Mr. Justice LUSH: The names of the passengers.

Mr. HAWKINS: The names of the passengers generally. I do

not know whether you did so on this occasion?—Yes.

The LORD CHIEF JUSTICE: Which occasion?

Mr. HAWKINS: The 4th and 5th of July. Did you take the names of all of them on that day?—No, I think there were one or two missing; they were passengers I did not notice, and they gave their tickets up at the wharf.

Among those you did take was there any name like LUIE?—I do not remember the name of LUIE.

Your vessel, you say, arrived at half-past nine in the morning of that Saturday?—Yes.

Have you made search at the Custom House for the purpose of seeing whether there was any other vessel left Ostend for London?—I have.

On the 4th or 5th of July?—I have.

Was there any vessel which left Ostend for London except yours?—No.

Mr. Justice LUSH: You searched the Custom House at Ostend?—Yes.

Mr. HAWKINS: And there was no vessel on either the 3rd, 4th, or 5th of July?—No, none for London.

Then, as far as you know, was your vessel the only one which arrived in London from Ostend on that 5th of July?—That is all: there was no other London ship there.

Now, do you know yourself as to what the practice in Ostend as to registering lodging-houses is?—Yes.

And the names of persons?—Yes, every lodging-house keeper, any hotel keeper, is supposed to give the returns in to the police.

The LORD CHIEF JUSTICE: Returns of what?—Of lodgers and visitors.

Mr. HAWKINS: That is to say, of strangers?—Yes.

That is at the police office?—Yes.

Have you searched there to see if you could find anywhere returned to the register the name LUIE?—Yes.

Dr. KENEALY: Your lordship heard the Witness's answer, "It is a thing they are supposed to do"

The LORD CHIEF JUSTICE: By that you mean a thing they ought to do?—Yes, according to the regulations they ought to do it. I went through the books with a person in charge of the office.

In charge of the police office?—The police office; in charge of the books.

Mr. HAWKINS: There is no such name I understand you to say?—No.

Mr. Justice LUSH: What dates did you examine?—I went for seven days previous to that.

A week previous to your sailing?—Yes.

How often are the returns made?—I cannot say, my lord.

Mr. HAWKINS: Are they made every day or every other day?—As the lodgers come in they have to give returns, I think the next day.

They are obliged to give returns next day?—Next day.

Cross-examined by Dr. KENEALY.

I want to know whether this directory is in or not. If it is in I want to use it.

The LORD CHIEF JUSTICE: I understood it to be.

Dr. KENEALY: Then I put it into the hands of LUIE to find out this person for me, and my friend Serjeant PARRY objects to it. It is no use to me otherwise. I cannot find it.

Mr. Serjeant PARRY: I thought the rule was that Counsel or Attorney might look at a document of that kind, but not put a document of that kind into the hands of a Witness about whom there is any discussion.

The LORD CHIEF JUSTICE: The only thing is, every rule occasionally calls for an exception, and, inasmuch as it would be a matter peculiarly within the knowledge of the Witness, if a fact at all, I do not think you ought to object.

Mr. Serjeant PARRY: My lord, then I do not.

(The Directory was handed to JEAN LUIE.)

Dr. KENEALY: What is the name of your boat?—The 'Belgium.'

That is not the 'Belgian' you have been asked about?—I understood the gentleman 'Belgium.'

The name, then, is the 'Belgium'?

Mr. Justice MELLOR: I certainly took it down so.

Mr. Justice LUSH: And I.

Dr. KENEALY: We all understood here the 'Belgian.' The note given us is the 'Belgian,' and the questions, as we understood, were as to the 'Belgian.' That is the reason I asked him to spell it.

How many passengers did you bring?—I will very soon tell you.

Oh dear! cannot you tell me without that big book?—Thirty-five.

How many of them were cabin and how many deck?—No deck passengers.

Are there two classes of passengers?—Yes.

What are the classes called?—Chief cabin and fore cabin.

How many fore cabin passengers were there?—Nine.

Did they sell tickets to passengers on board?—Yes.

The man goes about and asks everybody wanting a ticket?—Yes.

Will you tell me how many tickets of that kind were sold on board that voyage?—I cannot now.

Have you any idea at all whether any tickets were sold in Ostend?—Yes.

How many?—Well I cannot form any idea. I should think nearly thirty.

Is there any mark at all put on those tickets bought at Ostend?—The parties' names who take them are on the tickets.

The parties who take them at Ostend?—Yes.

The names are taken if they are bought on board?—Yes.

Have you brought all the tickets here?—No.

What time did you leave Ostend?—Half-past eight in the evening.

I suppose you did not go about looking into the faces of all your passengers that evening?—No.

When did you get to London?—Half-past nine the next morning.

Did you then make a voyage of discovery into the faces of your passengers?—I do not know about making a voyage of discovery. I went round to the passengers collecting their tickets.

Is it you who collect the tickets?—Yes, and issue them likewise.

The LORD CHIEF JUSTICE: Then the tickets that are taken on board the vessel, do you yourself deliver to the persons taking them?—Yes, in the book at the office. I take their tickets and give them a cheque in exchange for it to pass them out of the ship, and when I take the money, I give them a cheque for passing them.

Then it is not the Steward?—No.

Dr. KENEALY: How many passengers gave up their tickets whom you did not notice?—Two.

How is it it escaped you?—Very often when going round, I miss a passenger or two, and then they give their tickets up on landing.

Very often you miss a passenger or two, and you happened to miss two on that morning?

The LORD CHIEF JUSTICE: All the others then gave up their tickets upon the vessel?—Yes.

Dr. KENEALY: And the two gave them up?—On landing; that is the reason I did not have those two names.

Does the Steward never sell tickets on board?—No.

What time did you sell the tickets to the persons on board?—In the morning.

Just before the landing, was it?—Coming up the river.

At what time?—I cannot say exactly the time, but some time after daylight.

That is all you remember about it?—I cannot recollect the precise time of selling the tickets.

When were you shown the photograph?—About three weeks ago.

Who showed it to you?—A gentleman from the Court, but I cannot say who it was. I cannot say the gentleman's name.

A gentleman from the Court?—Well, from the Court or someone connected with the Case.

Two very different things, you know. Have you seen the gentleman here?—Yes.

Where is he?—I saw him outside just now.

Is he a Detective?—Yes, I believe so.

And you call him a gentleman?—Yes.

Do you know which of the Detectives it was?—No, I cannot tell you the gentleman's name.

Did he accompany you on board the ship?—Yes.

Re-examined by Mr. HAWKINS.

Do you remember whether you issued any tickets on board?—I think I did, two or three that morning.

[Adjourned for half-an-hour.]

CHARLES WINDER, sworn.

Examined by Mr. HAWKINS.

Were you the Inspector of the 'Belgian' steamboat?—Yes.

Which arrived on the morning of the 5th of July?—Yes.

Captain HAYNES?—Yes.

Had you any duty to perform with the passengers on board that vessel?—Taking the alien list.

I need not trouble you about the time the vessel arrived. Let me ask you, you have seen JEAN LUIE?—Yes.

Was he on board?—I have not seen him on board, not to my knowledge.

Cross-examined by Dr. KENEALY.

Look at him again?—I have not seen him on board to my knowledge.

You have not seen him on board to your knowledge?—No.

Who first talked to you about this?—I do not know the gentleman's name who first talked to me about it. He came on board and asked me.

Have you seen him about here?—Yes, I have seen him in the Court.

Did he bring you the photograph?—Yes.

How long was he with you?—About three minutes—not longer.

He is a Detective, I suppose?—I believe so. I do not know.

What?—I do not know.

Now look at that man (pointing to Jean Luie)?—I do not recognise him on board the ship at all.

Are you prepared to swear that man did not come in that ship?—I cannot swear that; but I do not recognize him on board the ship.

Re-examined by Mr. Hawkins.

As far as your knowledge extends, have you ever seen him before?—I saw him in Palace Yard yesterday.

Except in Palace Yard, you never saw him before?—No.

Mr. THOMAS JOSEPH BISHOP, sworn.

Examined by Mr. Hawkins.

I believe you are the chief clerk in the General Steam Navigation Company?—I am the cashier.

Are you able to tell me, was there any other steamer of your Company which came to London on the 5th of July than the one which Captain Haynes commanded?—You mean from Ostend.

From Ostend I mean?—Only one.

So far as your knowledge extends, are they the only Company between London and Ostend?—They are the only one.

Yours are the only boats running?—The only boats.

You have the counterfoils of the tickets, I think, which are issued?—The Captain has them.

Have you the tickets themselves?—No, I have not the tickets. All I have is the telegram from Gravesend notifying the ship arriving there, and the Captain's notice of arrival when he arrived in London.

Dr. Kenealy: I have nothing to ask you.

Mr. JOSEPH TRIBE, sworn.

Examined by Mr. Hawkins.

Do you attend from the Custom-House?—Yes.

Is it the duty of the owners of vessels, I mean to say the Captains of vessels, to deliver an alien-list at the Custom House?—Yes, at the time of reporting the vessel.

That is under statute?—Yes, by Act of Parliament.

6th William IV., chapter 2, section 2?—Yes.

Have you a list delivered by Captain Haynes?—The gentleman from the Home Office has the lists. I forward them to the Home Office.

Was there any other vessel from Ostend with the exception of the 'Belgium' on the 5th of July?—Not any.

Dr. Kenealy: I have no question to ask you.

DELL IN TICHBORNE PARK.

Mr. GABRIEL ROBINSON MORAN, sworn.

Examined by Mr. Hawkins.

You attend from the Home Office?—I do.

Is it your duty to take charge of the alien lists delivered under the statute?—It is. I receive them and keep them in the room where I sit.

Have you the alien list delivered by the Captain of the 'Belgium' on the morning of the 5th?—I have the list which states the 'Belgium' was bound from Ostend on the 5th of July.

Is there any name of Jean Luie?—Not in the least.

Cross-examined by Dr. Kenealy.

Is there any alien at all in the list?—There are five.

Do you receive lists of aliens for the month of July?—A great number.

What number for the month of July would you say?—I have not really counted them, but I should say about a couple of hundred from the various ports. I do not say from London.

A couple of hundred from all parts of England?—I think so. I do not speak positively.

All the ports of the United Kingdom?—Leith, Hull, and all?

Mr. Hawkins: That is the Case, my lord.

Dr. Kenealy: I have now to ask your lordships to give me time to call sur-rebutting evidence in this Case, and if there be no precedent for it, I take the liberty of using your lordship's own words, it is "time to make one;" because, certainly, as far as it seems to me, the greatest possible injustice will be done to the cause of the Defendant, if the testimony of Luie be allowed to be rebutted by the Witnesses who have been called without giving Luie an opportunity of showing that every single word of what he has sworn is true. My lord, I should have thought that the fair and proper course to be adopted by the Prosecution in this Case would have been, when they had their Witnesses here, to have recalled Luie and put him in the box, to have taken him then through the various things which their Witnesses were prepared to depose to, and then the Jury and the Court would have had an opportunity of forming an opinion, from the manner and answers of that man, whether he was the witness of truth or whether he was the witness of falsehood. They also would have had this great benefit of knowing whether, upon reconsideration, and knowing perfectly well that Witnesses had been brought here from America, for the express purpose of contradicting him—whether, upon full consideration, he would have adhered to the story which he originally told: that opportunity was not presented to the man, and I say nothing can be more unfair, and it will tend in the public mind to weaken——

The LORD CHIEF JUSTICE: Do not let us consider what is to be the effect on the public mind. We have only to consider what is the effect on the mind of the Jury. I have heard that more than once adverted to. In my opinion it is a very improper topic; we have nothing to do with the public within these walls. (Suppressed applause.) I must protest against the public being introduced directly or indirectly into the decision of this case.

Dr. KENEALY: I should have thought in a Prosecution of this nature, instituted at the public expense and carried on with all the force of the Government, that the Prosecution themselves would certainly have been anxious to satisfy the public mind that everything that is fair has been done. If your lordship prohibits me from making any allusion to that matter I will not follow it, but I should have thought the Prosecution themselves, considering the great interest this great Case is creating among all English speaking people, would be anxious to facilitate any means by which I could endeavour to show, by the testimony that I am prepared to call, whether the story is true which has been narrated to us in this Court the last two days, or whether the story is true which was narrated by JEAN LUIE when he was in the box.

The LORD CHIEF JUSTICE: That is quite another matter.

Dr. KENEALY: The Jury are the only legitimate judges in this Case. I am not entitled, as your lordship says, to refer to any opinion that may be formed out of doors. But I myself, as a humble minister of justice, if I were conducting this Prosecution, would not allow one single stigma to be thrown on the Case by pursuing the course that has been pursued, and pursuing the unfair course, I must say, of not having LUIE recalled.

The LORD CHIEF JUSTICE: We are not concerned with LUIE at all, except so far as LUIE'S evidence is material to the Defence. It is for the Defendant's sake if we allow any further evidence to be called; it would be for the sake of ensuring the fullest justice to the Defendant. We have nothing to do with the Witness. He is introduced into the Case as a Witness. We cannot go out of our way to enable a Witness to have the opportunity of vindicating himself.

Dr. KENEALY: If the vindication of the Witness will vindicate the cause of the Defendant, then the Court will go out of its way, and if it has no precedent will make one. Now I wish to read to your lordship the affidavit of LUIE himself, in support of the application.

The LORD CHIEF JUSTICE: We cannot take that. An application in the course of the Trial is made, on which an affidavit is to be introduced by a Witness.

Mr. Justice LUSH: We must determine this application with reference to the evidence on our notes, not anything extraneous.

Mr. Justice MELLOR: I would venture to say, also, the evidence affecting LUIE, and affecting the truth of his story, is documentary and official.

Dr. KENEALY: I apprehend, if I can show by the affidavit of LUIE that he is in a position to corroborate every single word of what he said——

The LORD CHIEF JUSTICE: Such an affidavit cannot be allowed.

Dr. KENEALY: May I respectfully ask why?

The LORD CHIEF JUSTICE: We are entitled to call on you now to go on.

Dr. KENEALY: I know your lordships are.

The LORD CHIEF JUSTICE: I do not wish to do anything at all inconvenient to you. We are entitled to call on you to go on. We cannot have an affidavit by a Witness interposed, with an addition to the evidence which he gave in the examination-in-chief and cross-examination; and who wants to introduce new matter, for aught I know, in an affidavit.

Dr. KENEALY: The affidavit is offered to be presented to your lordship solely to enable you to form an opinion whether you would grant time for sur-rebutting evidence or not. That is the ground solely on which I offer the affidavit; otherwise your lordship might very fairly say to me, How can you ask me for time to call sur-rebutting evidence if I have no evidence before me that the sur-rebutting evidence can be called.

The LORD CHIEF JUSTICE: Whatever you propose to give by way of sur-rebutting evidence you might have given in Evidence-in-chief. You might have strengthened the statement of LUIE by other evidence, if such evidence could have been procured; evidence to show that his statement was true. You had the fullest opportunity, because a gentleman, himself a member of the Bar, went out on your behalf and went over the same ground that Mr. PURCELL since went over on the part of the Crown. You therefore knew perfectly well all the materials which might have been adduced as being available for the purpose of strengthening LUIE. You did not produce that.

Dr. KENEALY: Suppose I offered evidence to you that LUIE was the owner of a public-house in Chicago or elsewhere?

The LORD CHIEF JUSTICE: These are very small matters indeed.

Dr. KENEALY: They must be small, but I am entitled to say the Prosecution do not consider them small or they would not have offered them or brought Witnesses here at expense to prove them.

The LORD CHIEF JUSTICE: If they had asked us to adjourn this Trial simply for the purpose of proving that LUIE did not keep a grog-shop, or that somebody else did not keep a grog-shop at a given place, we should undoubtedly not have adjourned the Case. It was with reference to the more substantial question, Whether there was an 'Osprey' that sailed from Staten Island at a given time, as has been alleged; that is the matter to which attention will by-and-bye be directed I have no doubt by the Counsel, and certainly by the Court, when we come to sum up.

Dr. KENEALY: I say we could not have called any evidence in support of LUIE at the time he was originally in the box to show there were the Customs at Staten Island; and there was a certain place at Staten Island beyond which a ship might go before she was liable to the jurisdiction of the Custom-House Officers.

The LORD CHIEF JUSTICE: That is a small matter.

Mr. Justice MELLOR: The evidence we have received clearly has been in reply. The Prosecution had no right to give any other evidence than evidence in reply to evidence you have called. If they went beyond that you should have objected, and we should not have allowed anything to be given that was not strictly in reply to your Case. And it was in contradiction of your Case, under circumstances which in themselves rendered it necessary; because no notice was given of LUIE, and nobody knew anything about it except the Defendant, and it really did come in the nature of a surprise; it was on that ground; they could not give evidence except in reply.

Dr. KENEALY: I say their rebutting evidence has come on us by surprise, and we ought to be allowed to call the evidence of captains and of persons who were well acquainted with the regulations of Staten Island in 1854, to show the Court what those rules and regulations were. At present, it is of the greatest importance to the truth of this Case, which is supported, to some extent, by the evidence given by LUIE, that LUIE'S evidence should be corroborated and shown to be true, and, therefore, I say we are taken by surprise by hearing now, at the eleventh hour, that it was impossible for ships to anchor abreast of Staten Island at a certain portion of the year, in consequence of the flow of ice; and that in summer——

The LORD CHIEF JUSTICE: Summer is quite unimportant, because he alleges that the thing in question took place in the month of February, 1854. What may be done in summer is a matter of immaterial importance.

Dr KENEALY: It is important in this way. If we are able to negative it and to show that the Witness who swore it was a rash man, and ought not to be relied on with reference to other matters, in that way it is extremely important. I complain that when Mr. WHALLEY was in the box he was not cross-examined as to a single one of those matters which Mr. PURCELL has been called upon to swear to; and at all events I ask your lordships to allow me to put Mr. WHALLEY into the box, and allow me to take him through the various interviews with Mr. FUNCKE and other persons, for the purpose of showing there is a wrong impression sought to be conveyed to the mind of the Jury. But the testimony Mr. PURCELL has given——

The LORD CHIEF JUSTICE: You brought that out by the cross-examination of Mr. PURCELL. It was no part of the Evidence-in-chief.

Dr. KENEALY: I did, because I did not fear, from the instructions I had, to ask anything that took place; but I was not prepared for the answer Mr. PURCELL gave, and I ask your lordship to allow me to put Mr. WHALLEY into the box.

The LORD CHIEF JUSTICE: You cannot do that. You ask in cross-examination some question in the hope of obtaining an answer that will make in your favour; instead of that you get an answer which is an unfavourable one. If you elicit the matter in cross-examination can you call some other Witness to show it is untrue?

Mr. Justice MELLOR: The only ground on which I think you could give, in such a Case, what you call rebutting evidence, is, supposing Mr. PURCELL or any other Witness who has been called made a statement on a matter irrelevant to the issue, which you were prepared to contradict by calling the person to whom the statement was made, in order to throw discredit on the Witness, that might be done. The evidence you suggest would not be admissible, even if Mr. WHALLEY was in the box, except on cross-examination.

Dr. KENEALY: I have an affidavit of Mr. WHALLEY in which he sets forth his proceedings in New York as a ground for asking your lordships to call rebutting evidence.

The LORD CHIEF JUSTICE: Such affidavits are not now receivable.

Dr. KENEALY: Your lordships required an affidavit on the second occasion, when the Prosecution applied for an adjournment. Surely you would require an affidavit from me when I apply for an adjournmeut.

Mr. Justice LUSH: Do you not see what a different thing it is between making a particular ground of adjournment the substance of an affidavit, and presenting an affidavit for making the grouud exist?

Dr. KENEALY: The affidavit will show the ground exists.

The LORD CHIEF JUSTICE: You might by examining Mr. WHALLEY have got all the result of all the researches which Mr. WHALLEY had personally made. You did not; but you put him into the box to enable Mr. WHALLEY to vindicate himself (not an unnatural or improper desire at all) against the suspicion of having made some communications to the Witness as to what he was to say. You did not ask Mr. WHALLEY a single one of the questions you now propose to ask him on calling him in reply. That is your fault.

Dr. Kenealy: With all submission I do not think it is, and I will test it in this way. Suppose I venture to ask Mr. Whalley to give me any information as to what happened in the office of Mr. Funcke between himself and Mr. Godecky and other persons, it would have been objected to that I was going into evidence that was not receivable.

The Lord Chief Justice: I am speaking of the researches made in the books. It would be competent for him to say he applied to the firm, and had found that they had no books of that period, and that they had all been destroyed. It is true he could not have stated the conversation that took place between Funcke and himself, neither can he now, and for this reason, it was no part of the case for the prosecution to obtain from the Witness the conversation that had taken place between Funcke and himself. They could not have asked the question. It would not be admissible evidence; you got it out on cross-examination.

Dr. Kenealy: I do not say now it would be admissible, what took place between Mr. Whalley and Mr. Funcke, but I say this, that time should be given by your lordships to enable us to give sur-rebutting evidence, because we could have those various persons here to whom Mr. Funcke referred; and I say that on affidavit, I do not say that on imagination.

The Lord Chief Justice: The affidavit of the Witness whose testimony is impugned.

Mr. Justice Mellor: To set up the Witness by examination-in-chief, by an affidavit stating that what he said is true.

Dr. Kenealy: I ask for time to call Witnesses who will satisfy the Court whether the account they have heard is true or not. I am merely mentioning the affidavit as ground why the Court should grant it. I must give some ground for asking the Court to adjourn, and I can only give that ground upon affidavit. Is it not the practice every day in Civil Cases to adjourn Cases upon affidavit, and this being an unprecedented and unexampled Case, I ask whether anything can be more unfair and unjust, the Crown having called a number of Witnesses from America to throw doubt and uncertainty, or, if you like, to give an absolute denial to the testimony of Luie—what can be more unfair than that there should not be an opportunity given to present the Case of the Defendant——

Mr. Justice Lush: What you call rebutting testimony is nothing more than further evidence in support of the Case that ought to have been given at the time. Rebutting evidence is to contradict something that has been suggested on the other side. You have given affirmative evidence on the part of Luie, that evidence has been attempted to be negatived on the part of the Prosecution. There is an end of it, affirmative and negative, and you cannot give further evidence to strengthen your Case.

Dr. Kenealy: Your lordship knows very well I would not have been allowed to give in evidence by Mr. Whalley that he had visited the various Custom Houses and had learnt certain things there.

The Lord Chief Justice: Oh! dear, yes, you could most undoubtedly. If Mr. Whalley had searched the records of the New York and Washington Custom House departments and found something relating to an 'Osprey' which made in favour of Luie's testimony, just the same as Mr. Purcell has given the evidence, so you might have given it in the affirmative.

Dr. Kenealy: Neither my learned friend nor myself anticipated that such evidence would be admissible, for your lordship will bear in mind when it was mentioned it was never imagined it would be.

The Lord Chief Justice: We cannot give additional facility to Counsel because they made a mistake in point of law.

Dr. Kenealy: There was no precedent, as far as we could discover, where evidence of the kiud such as Mr. Purcell gave us has been allowed to be given in any Criminal Case. The attention of my friend was called to it, and we were of opinion we could never ask Mr. Whalley questions of this kind. If we had been able to find in any law book—and pleuty of them were searched through—any clear and distinct rule laid down such as your lordships have laid down, that evidence of Mr. Purcell was admissible, we would have asked those questions of Mr. Whalley. After full consultation on the subject, we come to the conclusion (your lordship says it is erroneous, but we did the best we could) —we come to the full conclusion and conviction that evidence of this kind would not be admissible. We did not want, ou our part of the Case, to make a useless exhibition by attempting to give evidence of that kind, which I must repeat, with all submission to this Court, we have not been able to find one single precedent for, in any Criminal Case.

Mr. Justice Lush: Will you be good enough to state what you mean?

Dr. Kenealy: As to the result of Mr. Purcell's inquiries in the various Custom Houses.

Mr. Justice Lush: What do you mean by result of inquiry?

Dr. Kenealy: Parole evidence of various documents, and putting his own interpretation on them. He did not bring certified copies.

Mr. Justice Lush: That is by no means an accurate description; if you can put your finger on any part of the evidence which you say ought not to be received, I should be glad.

Dr. Kenealy: It seems we are entirely wrong, and grossly ignorant; but our opinion was if there were documents admissible in a Criminal Court, they ought to be certified copies of official records. That was the idea we had, and Mr. Whalley was not prepared with those certified copies; but if we had thought that Mr. Whalley would be allowed to give his own version of documents he read here and there, that he discovered in Quebec and other places, unquestionably we should have asked Mr. Whalley as to their contents.

Mr. Justice Lush: Do you refer to searches in the books?

Dr. Kenealy: I refer to the whole of the evidence.

Mr. Justice Lush: That is far too general. I want to know what particular evidence you refer to?

Dr. Kenealy: I have not the evidence before me at the present moment.

Mr. Justice Lush: You said you can find nothing in the law books. What is it? Searching books at Custom Houses is good secondary evidence, and has been, as long as the law has been established.

The Lord Chief Justice: Good here, if we were dealing with our own documents.

Mr. Justice Mellor: So far an authenticated copy in the sense you refer to; that is as to English documents; that does not apply to foreign documents.

Dr. Kenealy: We thought this Court would not receive documents that were not certified.

The Lord Chief Justice: There are no degrees in secondary evidence.

Dr. Kenealy: At a very early stage of the proceedings your lordships remember there was handed up some document—I do not think I ever saw it, therefore I may not be correctly describing it now—but some document was handed up to the Court certified by some high officer in public authority in the United States, and the Court refused to receive it.

Mr. Justice Lush: Let me call your mind to the distinction. That was offered by the Prosecution, and we declined to receive it because it was a certified copy of a document in America. That was not evidence at common law. It is only made evidence in this country by statute, which does not apply to this document. The evidence given is not of a certified copy, but a sworn copy, and that makes all the difference. We rejected that, and we could not receive it except under the statute.

Dr. Kenealy: We certainly were not at all prepared to expect that Mr. Purcell would be allowed to come into the box, and to say, "I have inspected certain books, and I cannot find certain names in those books."

Mr. Justice Mellor: It is the commonest evidence possible, and received over and over again.

Mr. Justice Lush: That is sworn evidence, the contents of the book.

Dr. Kenealy: I did not anticipate in a Criminal Court——

The Lord Chief Justice: There is no distinction between a Criminal Court and a Civil one.

Dr. Kenealy: With all submission, I have always been taught there is; that matters of property are never regarded with the same seriousness as matters of life and liberty by the law.

The Lord Chief Justice: The rules of evidence do not depend on whether you are applying them to life or to property.

Dr. Kenealy: Over and over again, I am sure, I have seen that the rules of evidence are certainly much more broadly read in Civil Cases than at Criminal Trials.

The Lord Chief Justice: I do not know that.

Mr. Justice Lush: I do not know it and do not recognise it. The evidence is the same in Civil Cases, whether the thing is worth a farthing or a million of money, as in Criminal Cases.

Dr. Kenealy: I must have formed a very erroneous opinion as to the stringency of rules of evidence in Criminal Courts as distinguished from their stringency in Civil Courts. If your lordships say it is the law that rules of law are as stringent in common Trials at *nisi prius*, in Cases which are tried every day, as they are in Cases affecting life and liberty, I am bound to accept what your lordships rule.

The Lord Chief Justice: Have you any authority of any sort or kind for saying the contrary?

Mr. Justice Mellor: Is there a dictum of any Judge who ever lived who has said the contrary?

Mr. Justice Lush: Or a single one in any text book?

Dr. Kenealy: I undertake to say that if I had known such a question was to be put to me by your lordships I should have had no difficulty.

Mr. Justice Lush: It is because of your statement I put it.

Dr. Kenealy: I should have had no difficulty in producing authorities for that.

The Lord Chief Justice: That there is a difference in the application of the rules of evidence in Civil and Criminal Cases?

Dr. Kenealy: Undoubtedly I can find authority, for the Courts are more stringent in rules of evidence which affect a man's life and liberty than in questions which affect a man's property.

The Lord Chief Justice: Have you any idea where such a doctrine is to be found?

Mr. Justice Mellor: The only way in which that could arise is, where a point of evidence is doubtful in a Criminal Case and there are no means of setting it right, either by a new Trial or otherwise, it has been the habit of the Judge to suggest to the Counsel, "As that is a matter of doubt you had better not press it," and the Council has said, "I will not press it." On that ground only, that there was no means of setting it right except by a pardon.

Dr. KENEALY: There is a signal illustration that will show I am right. It is a common thing in Civil Cases for Counsel for Defendants to produce an admission if they think fit, but the law will not allow an admission at all to be made in a Criminal Case.

The LORD CHIEF JUSTICE: There is a fixed rule, but that does not apply to the admissibility of evidence.

Mr. Justice MELLOR: That is a question of jurisdiction only on the ground they will not allow, in Criminal Cases, admissions to be made by the Prisoner or Defendant.

Dr. KENEALY: The law is so stringent in Criminal Courts that it will not allow, a Defendant to give evidence against himself or make an admission that may affect himself.

The LORD CHIEF JUSTICE: I beg your pardon. If a man before his Trial makes an admission, it is capable of being proved. They will not allow a man to make an admission at the Trial, but if a man confesses before his Trial comes on, do you mean you cannot give that confession in evidence?

Dr. KENEALY: The rule of law is, a man can admit nothing in a Criminal Case.

The LORD CHIEF JUSTICE: Not while the Trial is going on.

Dr. KENEALY: What is the meaning of admission?

The LORD CHIEF JUSTICE: An admission made out of Court may be used against him in it.

Dr. KENEALY: A confession made out of Court may be used against him in it.

The LORD CHIEF JUSTICE: Without a confession. Suppose a man admits in jail, or going to it—it may not amount to a confession—but suppose a man says, I admit at such time I was at such a place; it is given in evidence against him.

Dr. KENEALY: While the Trial is going on the law regards the man's position so tenderly that it will not accept an admission made by him against himself.

The LORD CHIEF JUSTICE: An admission made in the course of the Trial.

Mr. Justice LUSH: You must have it proved.

Dr. KENEALY: I am applying for an adjournment from your lordships. You will not allow me to read the affidavits on which I found that application, therefore I shall be told I have given no ground for it. I cannot ask for an adjournment without giving reasons, and my reasons are contained in affidavits.

The LORD CHIEF JUSTICE: You do give the reason, and you say you want to rebut part of the evidence. Evidence has been given that to load a ship from lighters off Staten Island in the month of February amounts to a physical impossibility, because the ice coming from the rivers that pour into that sea would sweep the vessel away, and have the same or still greater effect upon the lighters from which her cargo was being loaded. You say you want to meet that evidence on affidavit.

Dr. KENEALY: I do not confine it to that.

The LORD CHIEF JUSTICE: That is an example.

Dr. KENEALY: I say it is not the habit of Criminal Courts to receive the statements——

Mr. Justice MELLOR: Where would the Case end, I should like to know; if that is so, fresh affidavits would be made, and it would be like a game of battledore and shuttlecock. (Laughter.)

Dr. KENEALY: There is a certain time when it must come to an end, because when each feature of evidence is dated it narrows down to a point.

The LORD CHIEF JUSTICE: It may expand. (A laugh.)

Dr. KENEALY: It cannot expand, because the new issues between the parties become so extremely few that it is impossible they can expand.

Mr. Justice MELLOR: I will put an instance that occurred only yesterday. Two Witnesses were called, who, in addition to the physical difficulties of loading from the Island, said in the whole of their experience—one went over thirty years, and another still more—they had not known a vessel loaded at Staten Island. They were not cross-examined as to that. Suppose you were to call Witnesses now to say that ships have loaded off Staten Island, they would say, why not cross-examine those Witnesses? But you did not ask a question on that subject.

Dr. KENEALY: No, I did not think it worth asking.

The LORD CHIEF JUSTICE: If not worth cross-examining upon, it is not worth producing evidence about.

Dr. KENEALY: I did not produce evidence of that matter. I offer to produce evidence of Captains well acquainted with the whole of that navigation, who will or might establish the most important fact, that the Custom-House Officers never did come on board any ship entering the Narrows.

The LORD CHIEF JUSTICE: I do not see how that is material.

Dr. KENEALY: It is put as a proof that it is impossible that the 'Osprey' could have been there, because if she were there she would have been boarded by the Custom-House Officers, and they would immediately have made their report to New York. They say that is evidence the 'Osprey' was not there. I want to rebut that by evidence showing over and over again, "We have got into those Narrows; we never were boarded by any person from New York until after we had passed the Quarantine Point, and got our clean bill of health, and that is the invariable rule and custom, without exception, in our experience." Would not that be strong evidence to satisfy the Jury that the 'Osprey' might have been there, and that it does not follow that because no record can be found in the port of New York that she was not there.

Mr. Justice LUSH: Have you the affidavit of any person?

Dr. KENEALY: No, I have not an affidavit at all, but if your lordship tells me you will give me an adjournment on that affidavit, I shall have affidavits from Captain after Captain whose names have been sent to me.

The LORD CHIEF JUSTICE: Where?

Dr. KENEALY: English Captains. One is a Captain in the Cunard Line of ships.

Mr. Justice LUSH: Here in England?

Dr. KENEALY: Captain ANDERSON, late Captain in the Cunard Line. I do not confine it to Captain ANDERSON, but I am told it is a matter of certainty that almost every person acquainted with the navigation of that port will be able to give evidence on that point.

The LORD CHIEF JUSTICE: On which point?

Dr. KENEALY: That I may anchor my ship to the south of the Quarantine Board and I am perfectly exempt from any jurisdiction of the Custom-House Officers of the Port of New York, and it is not until after I have passed a Quarantine Board and the Officer of Health has been on board me, that the Custom-House Officers have any jurisdiction to come on board the ship.

Mr. Justice LUSH: I do not see how it is material.

Dr. KENEALY: It would explain why there was no apparent record of the 'Osprey' at the Custom House.

Mr. Justice LUSH: Your vessel loaded off Staten Island by means of lighters of Staten Island?

Dr. KENEALY: There is no evidence there are lighters of Staten Island.

Mr. Justice LUSH: The lighters of New York. If you have any affidavit from any person to say he has ever loaded a ship from Staten Island in that way, that is another matter.

Dr. KENEALY: I have no doubt, if your lordships tell me you will adjourn the Court upon an affidavit of that kind, that I shall be able to obtain it; but it is no use asking me for what I have not here, but which I can have in half-a-dozen hours.

The LORD CHIEF JUSTICE: Why not have been prepared with it?

Mr. Justice MELLOR: We can do nothing on speculation.

Dr. KENEALY: It is not speculation at all; it is quite certain I have no present affidavit upon it, but I have instructions upon that matter which I have no reason at all to doubt about.

(Their lordships consulted.)

The LORD CHIEF JUSTICE: I do not see how it will advance your Case to show that in practice the Custom-House Officers do not board until after the Sanitary Officer, or whatever they call him there, has been on board to see the ship is all right as regards sanitary regulations; the question is whether this is within the jurisdiction of the Custom-House, and whether a vessel once coming into the Narrows is liable to pay the dues which a vessel is bound to pay the Customs. It is not because in practice they do not board the vessels, that therefore a vessel anchoring within the Custom-House jurisdiction and Port of New York would not have to pay the dues, and it was found that, instead of coming in, stayed there taking her cargo.

Dr. KENEALY: My Case is she was on the open sea.

The LORD CHIEF JUSTICE: She is within American waters. The Narrows between Staten Island and Long Island are as much American water as the water at the Nore in the Thames is British water.

Dr. KENEALY: It is British water for one purpose, but not for Revenue purposes.

The LORD CHIEF JUSTICE: I beg your pardon. The moment a vessel is off the Nore it is so.

Dr. KENEALY: I can only tell your lordship what I am instructed: That no Custom-House Officer will enter, and it never has been known for a Custom-House Officer to come on board any ship coming up the river Thames, until she has passed a certain board below Gravesend. Although it is true she is within British waters, she is not amenable to the dues of the Custom-House until she has passed a particular board; and it is perfectly certain that two ships outside that board may carry on any transactions between themselves, and buy and sell, and do it exactly as if they were on the open sea, and pay no dues to anybody.

The LORD CHIEF JUSTICE: If a vessel comes within the port she is liable to the dues the port is entitled to exact. It is not because she comes in ballast for the purpose of loading a cargo and does not come up to the point where the Custom-House Officers usually board vessels, but if she has once entered the port so as to become liable for port dues, she cannot escape them.

Dr. KENEALY: She has not entered the port until she passes th Quarantine Board.

The LORD CHIEF JUSTICE: That is local law.

Dr. KENEALY: Suppose I call several Captains who are acquainted with the navigation of New York, who have passed through the Narrows fifty or sixty times in their lives, and tell you it is an invariable rule that they do not come within any port regulations——

The LORD CHIEF JUSTICE: How can they say it is an invariable rule?

Dr. KENEALY: They give their own experience.

The LORD CHIEF JUSTICE: They could only say, the Custom-House Officers do not in practice board the vessel until she

arrives at a given point. The question is whether short of that point is within the port, and subjects a vessel anchoring in those waters to the port dues. The whole of the Narrows between Staten Island and Long Island, according to the evidence given to us to-day, is within American waters, and within the jurisdiction of the New York Custom House. It is not because the Officers do not board the vessels at a certain point that the vessels anchoring outside that port will escape the port dues.

Dr. KENEALY: It may not logically follow it would be so. If I show in point of fact port dues are not charged to persons who lie outside.

The LORD CHIEF JUSTICE: Have you any instance of a vessel loading outside the Narrows?

Dr. KENEALY: Where a vessel anchors outside the Narrows, and is subject to no surveillance, nobody would dare to go on board her and claim dues. I take it to be absolute positive law, from what I have read or heard on the subject, that no Custom-House Officer dare enter on board a ship coming up the river Thames until she has come to a certain point below Gravesend.

The LORD CHIEF JUSTICE: That is where the Port of London commences; therefore she is not liable to any port regulations until she is within the port.

Dr. KENEALY: The Quarantine Board of Staten Island is where the Port of New York commences.

The LORD CHIEF JUSTICE: We have had evidence directly contrary.

Dr. KENEALY: That is the evidence I propose to contradict.

The LORD CHIEF JUSTICE: You cannot contradict statutes which are the law of the land.

Dr. KENEALY: The statute evidence is this, that Staten Island is within the Port of New York; that is the statute evidence, but there is a certain part of Staten Island which you may approach without being subject to the regulations.

The LORD CHIEF JUSTICE: Outside the Narrows?

Dr. KENEALY: Inside the Narrows. I will give your lordships evidence, if you will allow me.

The LORD CHIEF JUSTICE: What proof is there of that?

Dr. KENEALY: I shall be able to give it.

Mr. Justice LUSH: To prove what?

Dr. KENEALY: That inside the Narrows, and due south of the Quarantine point, or board, or sign, there is no visit by Custom-House Officers ever claimed as a right.

The LORD CHIEF JUSTICE: There are two Quarantine Stations further towards the sea. It is out of the Narrows altogether.

Dr. KENEALY: There is no evidence, and I believe there can be no evidence, that those were there in 1854. There is a vast distinction between matters done now in America and as they were done twenty years ago. We in England may not be able to realise that in an old country where there are established laws; but anyone acquainted with the transitional state of affairs in New York can have no doubt on the matter.

Mr. Justice LUSH: I do not know whether you are stating that from any authority or not; if it is only a statement given to you I may be at liberty to make a counter statement from my own experience. I landed there about thirty-five years ago, and that took place in my case which the Witnesses have mentioned here. When we got within the Narrows quarantine ground we were visited by Health Officers. I myself was taken on board to be examined to see if I was in good health, and the Custom-House Officers came on board.

Dr. KENEALY: The moment you got in quarantine ground?

Mr. Justice LUSH: Within the Narrows.

Dr. KENEALY: Your lordship said within quarantine ground.

The LORD CHIEF JUSTICE: You used the word quarantine; but I will put it as the termination of the jurisdiction. That is only the spot where the termination is.

A JUROR: It is of much more importance that we should be satisfied that a ship could lay there in February and be anchored there.

Mr. Justice LUSH: I was going to ask Dr. KENEALY if he is prepared to prove that any Captain or any other person loaded a vessel in Staten Island in the month of February?

Dr. KENEALY: I cannot answer that question. Your lordship remembers the evidence given in answer to your lordship by that Witness CORNELL, "Vessels have a right to anchor off the quarantine ground, and could not be interfered with."

The LORD CHIEF JUSTICE: But he says the ice was such that in February if the vessel laid there it would cut her in two.

Dr. KENEALY: With submission, that is going to another ground.

The LORD CHIEF JUSTICE: The Gentlemen of the Jury interposed and said that was the point.

Dr. KENEALY: I am on the matter of the vessel having a right to anchor in the open sea.

The LORD CHIEF JUSTICE: What he says is she has a right like any other vessel coming into the port. It was in answer to a question of mine. As he had said that was where the Quarantine Officer generally boarded vessels and where they lay, I asked him, with a view to clear that matter up, were there any local police regulations so as not to interfere with vessels in quarantine. He said there were no such regulations, but in regard to quarantine the vessels might anchor there.

Dr. KENEALY: What I understood the Witness to convey by that answer was this: they have an absolute right to anchor there, and nobody has a right to interfere with them.

The LORD CHIEF JUSTICE: It was in answer to a question by me which had reference solely to the point of whether, the quarantine vessel lying there, other vessels were at liberty to anchor at the same ground lest probably they might interfere with the quarantine. I put the question and elicited the answer.

Dr. KENEALY: I have put before your lordship as well as I could some of the reasons why I thought you might grant me an adjournment. Those reasons would be strengthened, in my humble judgment, if I were allowed to read the affidavits made by Mr. WHALLEY and the affidavit made by JEAN LUIE. Your lordships say I am not entitled to use those affidavits at all, therefore I feel the observations I have addressed to your lordships must be considerably weakened.

(Their lordships consulted.)

The LORD CHIEF JUSTICE: We are of opinion that no sufficient grounds have been brought to our attention to justify a further adjournment of this Case, with a view to enabling the Defendant to bring forward rebutting evidence to answer that which has been adduced on the part of the Crown, to answer the evidence of LUIE. If Dr. KENEALY had satisfied us that he was in a position to show that Staten Island was not within the Port of New York, and that therefore this vessel, having anchored outside the limits of the New York Custom-House jurisdiction—there being a total absence of any entry in the books of the Custom House in New York of the entry or clearance of a vessel called the 'Osprey'—that this was a matter that ought not to affect disadvantageously the testimony of LUIE, there might have been some ground for listening to this application; but all I understand Dr. KENEALY proposes to do is to show by the evidence of Captains of vessels trading to New York that the Custom-House Officers do not come on board directly the vessel has reached a certain point. Now, suppose that proved, it would, in my opinion, by no means get rid of the effect of the evidence which has been given as to the absence of all mention of the 'Osprey' in the books of the Custom House at New York. It may be that in point of practice with reference to considerations of convenience, the Custom-House Officers do not board vessels until they have reached a certain point in the Narrows. The question is whether a vessel, before she reaches that point, is within the Custom House jurisdiction, and is within the port, and liable to pay the duties, and liable to the regulations of the port; so that if a vessel anchored outside of the limit where the Custom-House Officers do go on board, and it was known she did not intend to come farther in her progress towards the Port of New York, when the Custom House Authorities might call on the vessel to pay her dues, although she did not come actually to the point where they usually are brought into contact with the vessels. It seems to me, if that evidence was produced, it would have no effect in meeting the Case put on behalf of the Prosecution; it being absolutely necessary for the purpose of rebutting that evidence to show that this part of Staten Island, or the water adjacent to Staten Island, where this vessel loaded, was outside the Port of New York, and not within the jurisdiction of the Customs. It has not been suggested any evidence to that effect can be produced. Again, it is said that if it had been known by the learned Counsel for the Defence that secondary evidence would be given or searches made into the various Custom-House books that were at New York, at Washington, or New Orleans, that Mr. WHALLEY would have been in a position to give evidence different from that which is given on the present occasion. We cannot adjourn the Case because Counsel have taken an incorrect view of what might have been the law applicable to a particular Case. It is a misfortune of theirs; it cannot be helped, but we cannot adjourn this Case for three weeks or a month in order to allow evidence of that kind to be given; nor can we allow Mr. WHALLEY to give evidence by way of rebutting evidence which undoubtedly he might have given in the first instance, when evidence has been given of the state of things in the month of February in those waters—that, owing to the quantity of ice discharged by the rivers which poured their waters into that particular sea, that ice is brought down in such quantities that a vessel could not lie there without certainty of destruction to herself or the lighters from which her cargo is to be loaded into her. If there were evidence offered to us to show that that was not the fact—that there was no ice poured down by those rivers, and a vessel could lie there in safety, that would be one thing; but it is not suggested that any evidence to that effect could be offered. Nor, when there is evidence that no vessel was ever known by persons who have inhabited that place and known those waters for twenty or thirty years—that no instance has been known of a vessel loading there, unless it can be shown vessels have been loaded there (and it is not suggested any such evidence can be found), it is nothing to show that Custom-House Officers only board a vessel at a given point. It by no means follows because it is the practice it is illegal to do so—that no American or foreign vessel is entitled to that absolute immunity, which the learned Counsel asserts, until the time it reaches a given point. No evidence is offered to us on the material points of the Case on which the credibility of the evidence and its effect must depend. I am not satisfied any evidence is forthcoming, and it seems to me that if that evidence was adduced it would be

irrelevant and immaterial to what is the real substantial issue to be determined in this Case.

Mr. Justice MELLOR: I am of the same opinion. I think it would be setting a most dangerous precedent if we were to yield on such materials to such a request. It appears to me that Dr. KENEALY was right to a certain extent with regard to Mr. WHALLEY's evidence. There was a great deal of evidence which has been given by Mr. PURCELL which Mr. WHALLEY could not have given in chief, and could only have been given by Mr. WHALLEY on cross-examination, and I do not understand that Mr. WHALLEY is in the least degree prepared to say that the result of any inquiries he made as to the entry of any particular shipping in particular books is untrue. We have had the records themselves, examined sworn copies of those records, and it would be a very strange thing indeed if it were possible to contradict the evidence given by Mr. PURCELL and the other Witnesses called with reference to the result of those inquiries. It is perfectly clear; the books speak for themselves; they cannot be contradicted; and although Mr. WHALLEY might have been asked some questions as to the result of his inquiries, yet the result of that must have been not to contradict what Mr. PURCELL and the other Witnesses have said. I think the only rebutting evidence that could have been given was evidence of that description, if he could have contradicted the statement and said they had fabricated evidence, in point of fact, as the result of the examination of those records, which I am sure no Counsel would do. Seeing that, and that that was the nature of the evidence, I am not surprised that Dr. KENEALY contented himself with calling Mr. WHALLEY, asking very few questions; and I am not surprised that Mr. HAWKINS did not cross-examine him; because he then would have made matters evidence which otherwise would not have been evidence. Therefore I am bound to say I cannot, upon any materials which are presented before us, think we ought to consent to any such adjournment. The suggestion appears to me more this—If you give us this, we possibly, peradventure, shall find out something, which in the result, as my Lord Chief Justice has described, would be found to be utterly irrelevant to the issue before us; and I think such a case as this, when the evidence has been strictly confined to reply—because I take it the Prosecution had no right to give any evidence which was not substantially reply—and if they had given evidence which was not substantially reply, it should have been objected to and our attention called to it. We should have stopped it. Speaking for myself, I should not have allowed evidence to be given to fortify the Case of the Prosecution, and I should only allow the evidence to be strictly confined to the evidence given by the Witnesses called by the Defendant. That is the only limit, as far as I can see. As regards rebutting evidence, my opinion is that unless you can show that the Witnesses made different statements,—for instance, suppose one of the Witnesses called to-day had made a statement to Mr. WHALLEY different from that he made in the witness-box, if the matter was material or relevant, Mr. WHALLEY might have been called again to contradict him. It must have been confined to that, or no Trial would ever end. I do not mean to say there might not be reasons (I wish to guard myself against that) on which the Court in its discretion might grant an adjournment, or might allow rebutting evidence to be given, but it must be confined to that, as it appears to me, otherwise I confess the judicature of the country would never end; we should never get to an end; and therefore I am entirely of opinion it would be a most dangerous precedent if on such materials we granted the adjourment asked for, and I am satisfied we are doing essential justice in refusing to allow it.

Mr. Justice LUSH: I am entirely of the same opinion. As regards the evidence given by LUIE, the material part of his statement on this part of the Case was that the 'Osprey' in which he sailed took up its cargo off Staten Island by means of lighters from New York. That is the material part of the statement. Witnesses have been called on the other side to show that no vessel was ever known to load at Staten Island, which, according to the regulations of the port, would hardly be allowed, or, if allowable, it was never known that a vessel took its cargo there; and especially for a vessel to take its cargo in the month of February, which was the date assigned by LUIE as the date the cargo was taken in. If Dr. KENEALY was prepared to tell us by persons who had been there that vessels did load from Staten Island in that month of the year, it would be a material matter; but he does not tell us he is prepared to offer any such evidence, nor do I find from his statement it is probable he can get such evidence. To ask an adjournment merely to enable him to see whether he can or not would be giving it merely on speculation, and I do not think we ought to grant an adjournment for any such purpose. Then, as regards the evidence proposed to be given by Mr. WHALLEY, I do not understand Mr. WHALLEY proposes to contradict any one of the Witnesses who have given evidence here. If he could have shown that the entries in the Custom House contained any notice of the 'Osprey' different from that given on the other side, that should and ought to have been given when Mr. WHALLEY was in the box, because that was the material evidence of the tale told by LUIE, and the time when Mr. WHALLEY could have given that was when he was examined as a Witness; but I do not understand Mr. WHALLEY was prepared to say that the evidence given as to the contents of these entries was not true. Therefore on no ground should we be justified in granting an adjournment. Evidence in reply must be confined strictly to contradicting that which has been given before.

The LORD CHIEF JUSTICE: We will now adjourn.

(Their lordships retired at 3.30 p.m., and shortly afterwards returned into Court).

The LORD CHIEF JUSTICE: I understand you wish to make some application.

Mr. HAWKINS: I cannot tell your lordship, because I am not acquainted with it, but two persons have come in this moment, and all I can say is that this moment a letter has been handed to me. I would rather hand it to your lordship, because I do not like to make any statement in Court which may affect anybody. I am told there are two persons, I do not know their names, nor what the nature of their communication is. I am told those two persons are here.

(The letter was handed to the Court.)

The LORD CHIEF JUSTICE: LUIE is here, and if those two persons wish to see him let them see him. If any application is made to us upon that it will be founded on a question as to identity, unless it goes to show he was elsewhere at the time in question, and not merely to affect him personally.

Mr. HAWKINS: Your lordships will not assume I am making any application. I was not aware your lordships had been sent for, in point of fact.

The LORD CHIEF JUSTICE: We were told there were two persons here.

Mr. HAWKINS: Two persons who have come in to identify him. As far as we are concerned, it is no action of ours in any shape.

The LORD CHIEF JUSTICE: Then there is an end of it.

[Adjourned to Monday morning next, at 11 o'clock].

EXTRACT FROM THE 'DAILY TELEGRAPH,' NOVEMBER 29TH, 1873.

The following supplement to this day's proceedings appeared in the 'Daily Telegraph' of November 29th:—

Immediately after the Judges had left the Bench, and while the Court was still full, a somewhat extraordinary occurrence took place at the Bar. It began by Mr. POLLARD, one of the Treasury Solicitors, pushing his way back into Court through the crowd of Barristers who were making their way out. He looked greatly excited, and after peremptorily telling LUIE, who was just rising from the seat he had occupied next the Defendant, that he must not leave the Court, and apparently giving instructions to others to see that he did not do so, spoke to Master COCKBURN, and made an earnest appeal to him to call back the Judges. A short interval elapsed, in the course of which the Defendant demanded of the Representatives of the Treasury their right for acting in the way they did, the only answer being a renewal of the instructions to watch LUIE, who was so closely wedged in by officials of one kind and another as to be unable to move if he had wished. Then the Judges returned, and looked to Mr. HAWKINS for an explanation of the summons brought to them by the Master.

Have you any application to make? inquired the Lord Chief Justice.

Mr. HAWKINS, who still retained his seat, but in the confusion had not noticed what was taking place, looked to the Solicitors for instructions, and Mr. POLLARD thereupon handed him a letter, at the same time communicating to him in a whisper the nature of its contents. Addressing the Bench, Mr. HAWKINS then said: I cannot tell your lordship what it is. I really know nothing about it, but a letter has just been handed to me, which I will give your lordship to read.

The letter was here handed to the Lord Chief Justice, who glanced it over and handed it to his learned brothers, inquiring meanwhile if LUIE was present. The answer being that he was, his lordship added: Then let these two persons who want to do so look at him if they desire to see whether they can identify him. Unless they can say anything as to his having been elsewhere at the time his evidence refers to, the matter is a personal one that we are not concerned in, and with which we could not interfere.

Mr. HAWKINS having disclaimed any connection with the bringing back of their lordships, the Court finally adjourned, threats being openly used by the Treasury officials as to how they intended to deal with LUIE.

Late in the evening inquiries were made at the Bow-street Police-station with reference to the rumour, which became pretty generally circulated after the rising of the Court, to the effect that the Prosecuting Solicitor in the TICHBORNE Case had decided upon applying there for a warrant for the apprehension of LUIE.

It was ascertained that no information respecting the matter in any shape had been received at that office, and consequently that no application for a warrant had been made at the magistrate's court. At Scotland Yard the Officials were similarly unaware of any step having been taken to insure the custody of the alleged criminal; and at the King-street Police-station, where Luie would in all probability have been confined for the night had he been arrested in the neighbourhood of Westminster Hall, nothing was known of the movements or intentions of the Prosecution. Inspector Clark, who has been engaged in the Case on that side, and who was in one of the ante-rooms of the Court of Queen's Bench when Mr. Pollard tendered the mysterious communication to the Master, was sent for soon after the departure of their lordships, but whatever may have been the nature of the special instructions given to him, the apprehension of Luie was not of the number, and it is not probable that any other Officer would have had that duty deputed to him. It is generally believed that no warrant will be sought—indeed, it is considered doubtful whether any further step in the direction of securing the person of Luie will be taken. However, should the Prosecution decide upon further action in respect of the accusations made against him, it is almost certain that it will not assume a definite shape before the sitting of the Court on Monday at eleven o'clock. It may be mentioned that the Officers engaged in the telegraphic department at Scotland Yard up to a late hour last evening had received no information of the apprehension of Luie from any of the suburban stations.

To the Editor of the 'Daily Telegraph.'

Sir,—I have to acknowledge and to thank you for your care in detecting and forwarding to me the letter with my name attached relating to the Tichborne Case, and to inform you that the same is a forgery.

I avail myself of the opportunity of stating that it is not true that I have in any respect withdrawn from, or that my views and intentions with reference to this Case have in any degree changed.

At a recent stage of the proceedings I made an appeal through some local newspapers for aid to bring up Witnesses for the Defence, and had some conversation with the Lord Chief Justice on the subject.

The evidence being closed, I withdrew this appeal through the same channels, expressing also my regret that the Case should be thus left imperfect before the Jury and the public; and this is the only ground on which any statement as to my withdrawal could be based.

Again thanking you, I am, Sir, your very obedient servant,
Plas Madoc, Nov. 26, 1873. G. H. WHALLEY.

JEAN LUIE'S INTERVIEW WITH DR. KENEALY, ON SUNDAY, NOVEMBER 30th, 1873.

It was on the Sunday night following this Friday, that Luie visited Dr. Kenealy at his Chambers in Gray's Inn. Never can that scene be forgotten. He trembled all over with emotion. The big tears rolled from his eyes, and stood in large dew-like drops over his beautiful flowing beard, a beard that appeared to be of at least three years' growth, so ample were its proportions. Deeply agitated, he implored Dr. Kenealy, in the name of his dead father, who, he said, had been a Lutheran clergyman; and in the name of his brother and sisters and family, upon whose reputation no blot had ever been, to vindicate his character on the Monday following. He paced the room with long strides and wrung his hands, and looked the impersonation of wrongly wounded honour, and of a fair fame falsely and foully assailed. As he detailed his injuries, Dr. Kenealy felt indignant at what seemed a scandalous abuse by Mr. Pollard, and he promised to bring his case before the Court, whereupon Luie fell on his knees before him, and kissed his hand with wild fervour, while tears again fell from his eyes, and he quivered all over under the seeming spell of intense feeling. Yet what occurred on the Monday following led directly to his own conviction into penal servitude. Herein is a deep mystery.

ONE HUNDRED AND THIRTY-FIRST DAY.—Monday, December 1st, 1873.

Dr. Kenealy: My lord, I have received a notice of some further Witnesses on the part of the Prosecution.

The Lord Chief Justice: Witnesses on the part of the Prosecution?

Dr. Kenealy: I had better read your lordship the Notice: "Take Notice,—That it is intended on Monday next, the 1st December, to give evidence on the part of the Prosecution, to prove that the statements of the Witness Jean Luie as to the date of his arrival in London are untrue, and you are hereby required to have Jean Luie in attendance at the sitting of the Court on that day. Dated this 29th day of November, 1873.—To Mr. Jean Luie, 12, Church-row, Lambeth," and that is signed by Mr. Stephenson.

The Lord Chief Justice: You received that on Saturday?

Dr. Kenealy: Precisely, my lord.

Mr. Hawkins: I will tell your lordship exactly what occurred. There were two Witnesses introduced into Court, or who came here, I do not know how; I have not the slightest knowledge of them, and your lordship knows you came afterwards back into Court for the purpose of hearing any application that might be made to your lordship on the subject.

The Lord Chief Justice: Yes, we were informed that there were two persons who desired to identify Luie, and we naturally assumed that it had got something to do with the present inquiry.

Mr. Hawkins: Just so, and your lordship intimated that if what they were about to speak to was matter affecting his character, and merely matter affecting his character, whether his honesty or otherwise, collateral matter, it would not come within the class of evidence I was at liberty to offer, and of course under those circumstances I did not make any application to your lordships on that occasion. In order that there might be no difficulty in the matter and no delay, unquestionably on Saturday the Notice was given which has just been read, was given in anticipation that the evidence which the Witnesses were in a position to give was evidence which would be strictly within the character of evidence in reply, and which would not involve any further adjournment or delay in the conduct of the Case. After having carefully considered it with reference to what your lordship's observation on Friday afternoon was, my friends and myself think it is not within the strict evidence which we are entitled to offer in reply; and we feel, moreover, if we were now to make the application to your lordships it might bring about another adjournment, and lead to serious consequences, and under those circumstances I have no application to make to your lordship.

Dr. Kenealy: I have now to move your lordship for an attachment for Contempt, as it seems to me, of about the most scandalous sort, in this Trial, and that motion which I am about to make arises out of the unprecedented scene which took place here on Friday last in the presence of the Jury, on the part of one of the Solicitors for the Prosecution. Your lordship will bear in mind that Jean Luie was under no obligation at all, except the promise that he made to your lordship, to remain in this country. It is perfectly true that a Witness once examined is bound to attend the Court from day to day, but this man is a foreigner, an American citizen; and if he had not been able to give recognizances for his attendance here from day to day I hardly think the Court would have sent him to Newgate because he was lying under that inability.

The Lord Chief Justice: There is no occasion to determine that.

Dr. Kenealy: There is not; but I mention it to your lordship as showing the complete *bona fides* of this man. My lord, he came here from day to day, according to his promise to be in attendance on the Court pursuant to the request your lordship made to him, and on the Friday when in attendance in that way, happened that most scandalous and shameful scene, which I must put before your lordships as undoubtedly one of the worst Contempts of Court for the purpose of prejudicing the minds of the Jury and of corrupting and poisoning the current of justice that could be, and which I say was advisedly and deliberately done in this case; and I will not allow Mr. Hawkins to ride off on a pretence that there was some evidence against this man. They are lawyers of very long experience and must have known perfectly well how it would operate, and that nothing collateral, criminal, could be brought before your lordship, and I defy them openly in this Court to bring anything of a criminal nature against this man now. (Suppressed applause.)

The Lord Chief Justice: It is idle to defy them to do that, because they cannot do it.

Mr. Justice Lush: They cannot be allowed to do it.

The Lord Chief Justice: No.

Dr. Kenealy: I will read the affidavit of Jean Luie in which that scene is mentioned:—

"In the Court of Queen's Bench.

"The Queen against Castro, otherwise Tichborne.

"I, Jean Luie, now residing at Rosebank, Finchley, make oath and say:—

"1st. I am a native of Bornholm, Denmark. I was bred to the sea, my father being a trader carrying on trade between Copenhagen and Elsinore in his own vessels. In the year 1867 I was duly admitted to the rights of citizenship in the United States of America, and am now a citizen of such United States.

"2nd. On the 7th of July last, I gave information to the

Defendant in the cause of 'THE QUEEN v. CASTRO, otherwise TICHBORNE,' then and now under Trial in the Court of Queen's Bench, and in consequence thereof I was required to give evidence on his behalf in the said Trial, and I did give evidence therein on the 14th and 15th days of October last.

"3rd. After such evidence had been so given by me, it was my desire and intention to return home to the United States, where my children are; but while preparing to do so, I was again required to appear in this Honourable Court on the 17th of October, and was then and there required and ordered to remain in attendance on this Honourable Court until I should be further permitted to leave this country and return to my home in America as aforesaid.

"4th. On the 27th and 28th of November instant I was accordingly present in this Honourable Court, and then and there heard various Witnesses examined on the part of the Prosecution and give evidence in contradiction of that which was so given by me as aforesaid on the 14th and 15th October, and I say that such evidence, in so far as the same can be understood as being at variance with that given by me on this Trial, is untrue; and the evidence so given by me"——

The LORD CHIEF JUSTICE: We cannot hear that. There could be no greater abuse of the right you are now availing yourself of than to insert that in your affidavit.

Dr. KENEALY: I will skip that part.

The LORD CHIEF JUSTICE: Not after you have read it.

Dr. KENEALY: My lord, I have not read half of it.

The LORD CHIEF JUSTICE: You have read enough to satisfy me that whoever framed that affidavit was also guilty of Contempt of Court.

Dr. KENEALY: My lord, I am sorry to hear it.

"5th. After the proceedings of the Court had been closed on the 28th of November instant, before I and others had left the Court, and while still occupying a seat in front of the Bench, I was addressed by a person who I am informed was a Mr. POLLARD, one of the Solicitors employed by the Government on the part of the Prosecution, as follows:—Placing his hand on my shoulder, he said to me 'Sit down, LUIE, and don't go away. You are to be identified'; at the same time he called into the Court several persons who then came and stood opposite to me. Mr. POLLARD then addressing the persons so called in said, while pointing to me, 'That's the man; watch him; don't let him go. Call two more if you want them.' And the said Mr. POLLARD then left for the purpose of obtaining the presence of three Judges who had just previously left the Court. The three Judges having returned into Court, Mr. HAWKINS, the Counsel engaged on the part of the Prosecution, handed to them a letter, which they read, and having asked Mr. HAWKINS whether he had anything to say, and he having replied that he had not, the Judges again left the Court without receiving themselves or affording me any explanation of the outrage and detention to which I had been thus publicly subjected.

"6th. Since I have been so detained in this country as aforesaid, and as well before I gave my evidence as since, I have been repeatedly subjected to annoyance and insult by persons whom I believe to be employed by the Government for the purpose of watching me, such persons being wherever I went, and believing such to be Officers of the Detective Police Force, I made complaint of the same at the Office of the Treasury, and also to Mr. CLARKE, the Chief of the Detective Police, at Scotland Yard."

Now, my lord, I say that that scene was calculated above all others to prejudice and poison the minds of the Jury, and consequently comes within that doctrine which your lordship has laid down, that for anybody to attempt to prejudice the public mind in any way, either by speeches, or by pamphlets, or by newspaper articles, or by any other public conduct, is a person liable to be committed for Contempt and to be fined or imprisoned by your lordship. I need hardly remind you of the exciting scene which happened during the course of these proceedings; and the Jury themselves were standing up and looking on with amazement and astonishment, expecting some atrocious crime was going to be laid to the charge of this man. Your lordship smiles——

The LORD CHIEF JUSTICE: I did not; I beg your pardon.

Dr. KENEALY: We ourselves who represent the Defendant in this Case were perfectly unaware of what was going on. We saw that there was an excitement; we saw how Mr. POLLARD was conducting himself; we saw the whole Court in a state of the greatest agitation and turmoil that could be conceived. Your lordships were hurried from your private room as if a matter of life and death were going to be brought before you.

The LORD CHIEF JUSTICE: No; a question of identity, we understood. But, however, I think the shortest course to pursue with it is to let Mr. POLLARD make such an affidavit as he is advised of the facts under which our attention was called to the Witness LUIE on Friday afternoon, and we will see what is to be done.

Mr. HAWKINS: Quite so, my lord.

Dr. KENEALY: I hope your lordship will not allow him to assert in affidavit statements he heard from other people.

The LORD CHIEF JUSTICE: You are seeking to visit Mr. POLLARD with the consequences of a Contempt of Court?

Dr. KENEALY: Yes, my lord, I am.

The LORD CHIEF JUSTICE: Do you mean to say that it is not to be open to Mr. POLLARD to explain the circumstances under which he asked for the presence of the Judges?

Dr. KENEALY: Undoubtedly not, my lord.

The LORD CHIEF JUSTICE: Then I am of opinion it is, and it would be a monstrous injustice if it were not.

Dr. KENEALY: That will be also a monstrous Contempt of Court; because whatever information he had—and I am not afraid of it——

The LORD CHIEF JUSTICE: I say, let Mr. POLLARD answer that affidavit if he can, and in answering it let him consider what is material that he should inform the Court of. We cannot deal with this matter until we shall have heard Mr. POLLARD, as we think it right under the circumstances that Mr. POLLARD should be called upon to answer that affidavit. That is all I say at present: but as to saying that he is to exclude from the affidavit, which we call on him to make, such matter as he may think material to his defence, would as strongly savour of injustice as anything possibly could. Let him make an affidavit in answer, and then we will deal with it.

Dr. KENEALY: I was about to tell your lordship the complaint is that it was done in open Court before all the Jury.

The LORD CHIEF JUSTICE: We know that fact.

Mr. HAWKINS: I do not think on the part of the Crown that I ought to permit one single moment to elapse without stating that which the public ought to know. It is stated here by the Counsel for the Defendant that this was advisedly done for the purpose of prejudicing the Case on the part of the Defendant. I do assure your lordships, not only on my own behalf, but also on behalf of my learned friends here associated with me, that we had no idea, until those two persons entered the Court for the purpose of seeing the Witness LUIE, that they were about to come, nor when I handed the letter to your lordship had I the least idea what the contents of the letter were.

Mr. Justice LUSH: That you stated on Friday.

Mr. HAWKINS: It was so stated; but if I had desired to prejudice the Defendant, I could have stated and should have stated to the open Court much which I had to tell your lordship; but I had a desire not to state it because I did not desire to prejudice anybody before the Court. I think it right to say we did not know what they were going to say or why they came into Court, and when I arose after your lordships came into Court, I had not the slightest idea of what they had said.

The LORD CHIEF JUSTICE: I say this much: undoubtedly if Mr. POLLARD did what he is alleged to have done with the view of creating an undue prejudice against the Defendant, and for the purpose of what Dr. KENEALY calls corrupting and poisoning the mind of the Jury, Mr. POLLARD would have been guilty of gross Contempt of Court. In order to judge how far he was or may have been actuated by such motives, it is essential that we should know how he came to call upon LUIE to be detained for the purpose of certain persons seeing him. I understood at the time it was a question touching LUIE being in this country at a time when he alleged himself not to have entered this country, and in that sense and view evidence might have been most material—in my judgment, most material; and if that was the motive by which Mr. POLLARD was actuated, that he desired those persons should have an opportunity of seeing and identifying LUIE with reference to a question of LUIE's presence in this country at a time when he alleged himself to be far away, I should consider that evidence very material evidence indeed in this Case; and if that was the object of Mr. POLLARD, whether in the excitement of the moment he acted with a little less discretion and prudence than he might have done otherwise, is another and different question; and under those circumstances he may perhaps have done that which if he had had more time and leisure to deliberate he would not have done. He might not have touched LUIE on the shoulder, and said what he did. If that all be true, all we have to say is, if it were his intention to poison the minds of the Jury, or to put it in the language of ordinary men, prejudice the minds of the Jury (because it is merely the language of the learned advocate), no doubt he is guilty of Contempt of Court; but of that we must judge when we know what were the circumstances, and who were the persons who came, and what was the purpose for which they sought to identify LUIE. When we have that before us we can judge of it. I must say to exclude that from Mr. POLLARD in his affidavit when it is attempted to commit him for Contempt of Court, in doing that which would prejudice the minds of the Jury against LUIE, and the evidence he gave, would to my mind be one of the most signal injustices that could be done. Therefore, to-morrow morning let him produce an affidavit.

Mr. HAWKINS: Would your lordship permit Mr. POLLARD to make the affidavit earlier, this afternoon? I do not like one single moment longer than is absolutely necessary to keep back from your lordships and the public what Mr. POLLARD'S explanation is, if you will permit him to do that?

Mr. Justice MELLOR: After the adjournment.

Dr. KENEALY: Will your lordship adjourn now until that is done?

The LORD CHIEF JUSTICE: No.

Dr. KENEALY: It will be very inconvenient to be interrupted in my speech on the question of Contempt; because if this affidavit contains facts derogatory to the character of LUIE, I shall ask your lordship to allow it to be answered.

The LORD CHIEF JUSTICE: That will be matter to consider when it comes.

Dr. KENEALY: I hope your lordship will not allow me to be interrupted.

The LORD CHIEF JUSTICE: You will not be.

Mr. WHALLEY, M.P. (who sat beside the Junior Counsel for the Defendant) here rose and said: With the utmost deference and humility on my own part——

The LORD CHIEF JUSTICE: Mr. WHALLEY, what are you doing? Addressing this Court as a Barrister without robing!

Mr. WHALLEY: Not as a Barrister, but as one of the public.

The LORD CHIEF JUSTICE: Then as one of the public you have no business to address us.

Mr. WHALLEY: Your lordship challenges LUIE'S affidavit. I am the man who drew it——

The LORD CHIEF JUSTICE: (With emphasis) I desire you to sit down, sir, and be silent.

Mr. WHALLEY: My lord, I am the man.

The LORD CHIEF JUSTICE: Sit down, sir, and be silent. (Mr. WHALLEY then resumed his seat.)

Mr. HAWKINS: Will your lordship forgive me for one moment, in consequence of this application?

The LORD CHIEF JUSTICE: Certainly.

(Mr. HAWKINS conferred with his side for a short time.)

Mr. HAWKINS: My lord, after the observation which your lordship has addressed upon the subject of this Contempt of Court, I distrust considerably my own judgment, and my friends distrust theirs also. I was desirous, as I told your lordship, of avoiding, as far as it was possible, any further adjournment of this Case. I was desirous of not offering to your lordships any evidence which might be considered strictly in reply to that which had been offered already on the part of the Defendant, and upon the Cross-examination of LUIE, as it was concluded by me when he was in the box. But, my lords, after the observations which have been made, and considering this application made to your lordships, I propose to tender now as evidence in the cause, the evidence of those two Witnesses who were in Court the Friday afternoon, and of two more for the purpose of corroborating them in the statement they themselves made. My lord, I propose to tender their evidence. You will then have before you, on the oath of the Witnesses themselves, the greater part, if not the whole, of that which influenced Mr. POLLARD.

Dr. KENEALY: I hope your lordship will not accede to any such course, and for this plain reason, that we come into Court

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with no knowledge of any sort who they are in the notice given. By your lordship's direction, after the first adjournment, we received the addresses and character of the Witnesses.

The LORD CHIEF JUSTICE: Not our direction, for the simple reason that we could give no such direction. All we did was to make a suggestion, feeling satisfied that any learned Counsel conducting a Prosecution would, in justice to the Defence, listen to and act on the suggestion of the Court; but you must not take it it was by our direction.

Dr. KENEALY: Then by your lordship's suggestions if you prefer it.

The LORD CHIEF JUSTICE: I do prefer it.

Dr. KENEALY: That was done, and on the notice we received there was no name or address given.

Mr. Justice LUSH: How does it commence?

Dr. KENEALY: "Take Notice that it is intended on Monday next, the 1st December, to give evidence on the part of the Prosecution to prove that the statements of the Witness JEAN LUIE as to the date of his arrival in London are untrue, and you are hereby required to have the said JEAN LUIE in attendance at the sitting of the Court on that day.—To Mr. JEAN LUIE, 12, Church Row, Lambeth."

The LORD CHIEF JUSTICE: You want time to inquire who these Witnesses are?

Dr. KENEALY: Yes, we have not the remotest idea.

The LORD CHIEF JUSTICE: You see you have forced this on Mr. HAWKINS.

Dr. KENEALY: Excuse me, I do not think I did, because he got up and gave the public notice that he did not intend to call these Witnesses.

The LORD CHIEF JUSTICE: I think he is perfectly justified in saying, if the evidence is admissible, he would have it admitted.

Dr. KENEALY: He has said after consultation with his friends that they were of opinion it was not admissible. Now your lordships are asked to admit that which the Counsel thought inadmissible.

The LORD CHIEF JUSTICE: If inadmissible, we shall not admit it. We need not anticipate the question of admissibility, but I

understand you want to know who and what these Witnesses are?

Dr. KENEALY: Yes, my lord.

The LORD CHIEF JUSTICE: What do you say, Mr. HAWKINS?

Mr. HAWKINS: With reference to the Witnesses I propose to call, there were two here on Friday, and of course they could not have been called until this morning. With regard to two others, they have never been able to get sight of the Witness LUIE until this morning. That is my reason. Of course I could not give their names. They all speak to the same facts.

The LORD CHIEF JUSTICE: But then Dr. KENEALY says he does not know who and what these Witnesses are, and wants some opportunity of making inquiry about them.

Mr. STEPHENSON (Assistant-Solicitor to the Treasury): LUIE said that he knew them.

Dr. KENEALY: There is an assertion made here within the hearing of the Jury, that LUIE knew them and said so. He did not.

Mr. HAWKINS: Now all this is a question entirely for your lordship. I have no right to say a word. Of course, I might say if the evidence is admissible, and your lordship thought it, admit it; I should insist on tendering them, but I do not desire to do anything but whatever your lordship thinks right in the matter.

The LORD CHIEF JUSTICE: We must hear what these Witnesses are prepared to state, with a view of judging of the question of Contempt which it is said Mr. POLLARD has committed. If I am understood right, on Friday what was proposed was this, that these Witnesses should have an opportunity of identifying LUIE, upon the ground that they would be able to show that he was in England at the time he said he was not. I cannot help thinking that that is material to the credibility and effect and cogency of his evidence. If you take a different view of it, I merely throw that out quite incidentally, to the question of whether Mr. POLLARD acted properly or improperly in bringing those Witnesses in the other day to see LUIE. In my opinion, that was the purpose for which the Witnesses were introduced. That was material, for it went to the weight and effect of LUIE'S evidence, and therefore Mr. POLLARD, although he may have been perhaps a little hasty, did no more than that which was properly within the scope of his duty, and incidental to the question I throw out, in my opinion, the evidence was material. If you desire to give that evidence, give it by all means; if you do not, withdraw it, but in any case it is very much preferable with a view to the question of Mr. POLLARD'S complicity in this charge brought against him, that we should hear what the Witnesses have to say—not that I should desire you should put them into the Witness-box for that purpose. I only say that may be an element in the consideration whether you will offer it or not.

Mr. HAWKINS: Your lordship will see the position in which we are placed. I could not tell you, without being supposed to be endeavouring to prejudice the Case, of the details which have been mentioned in the course of the consultation which my friends and myself had.

The LORD CHIEF JUSTICE: Of course not.

Mr. HAWKINS: We have had the matter under consultation for a considerable time. I have told your lordship the reason why, rather than have a question raised as to the admissibility of evidence, we thought it preferable to waive the evidence rather than offer it to your lordship. I should have adhered to that, but for the statement made that I am endeavouring to create prejudice, and I will not have that said, on the part of the Crown, that I am endeavouring to prejudice Witnesses in any way without foundation, and for that purpose it is that I propose to take your lordship's judgment whether it is admissible or not.

The LORD CHIEF JUSTICE: Then the only question is whether Dr. KENEALY ought not to have an opportunity of ascertaining what those Witnesses are whom you are about to call.

Mr. HAWKINS: That is a matter entirely for your lordship. I ought not to say a word about that.

The LORD CHIEF JUSTICE: I do not like the idea of another adjournment; every day is of importance, but still I think in a matter of this moment the better way will be to have these Witnesses, and then we will see. In the first place we shall know from where they resided, who and what they are, and if it then appears that there is any reason whatever to think that further inquiry as to who and what they are will be essential to the ends of justice, I am quite willing to listen to any suggestion that Dr. KENEALY will make as to his postponing his cross-examination, or further cross-examining him after inquiries shall have been made. I think it a pity to lose time.

Mr. Serjeant PARRY: May I ask that the affidavit my friend has used this morning may be filed?

Master COCKBURN: It is in.

Mr. Justice MELLOR: It must be filed when it is in.

Mr. PETER PETERS, sworn.

Examined by Mr. Serjeant PARRY.

Are you Chief Clerk in the employment of Messrs. HOFMAN, SCHENK and Co., of 4, Vine Street, Minories?—Yes.

Are those gentlemen ship and insurance agents?—Yes.

Just answer me this question simply yes or no. On the 29th of March last of this year did you receive a telegram?—Yes.

Was it addressed to your clients?—Yes.

Will you produce that telegram?—I cannot, because I did not have it. It was not addressed to us. It was only addressed to our care.

The LORD CHIEF JUSTICE: You mean the care of the firm or your individual care?—No, the care of the firm.

Mr. Serjeant PARRY: Now on the same day in the afternoon did a person call at the office of Messrs. HOFMAN and Co.?—Yes.

What was the name that person gave?

Dr. KENEALY: I object to that.

Mr. Justice MELLOR: Yes.

Mr. Serjeant PARRY: Have you seen that person since?—Yes.

When?—Several times after he called at the office.

Do you see him here now?—Yes.

Where is he?—There he is (pointing to LUIE).

Sitting next to the Defendant?—Yes.

When he came on the afternoon of that day, what name did he give you? What did he say to you?—He asked me whether there was a telegram.

For whom?—I asked who he was.

What did he say?—He said his name was SORENSEN.

Did he say what was his calling or his position when he said his name was SORENSEN? What else did he say?—That he was master of a vessel called the 'Gerda.'

Dr. KENEALY: Is this rebutting evidence? The Witness was not asked one single word on cross-examination.

The LORD CHIEF JUSTICE: They did not know it at the time.

Dr. KENEALY: Then will Witnesses be allowed to be called——

The LORD CHIEF JUSTICE: That will be decided when it arises. We must go by steps.

Mr. Serjeant PARRY: What else did he say? Tell us what passed between him and you?—I then handed him the telegram which was addressed to him, and which he opened in my presence.

To whom was that telegram addressed?—To him, the name which he gave.

What was it?—Captain SORENSEN.

Tell us what passed between him and you?—He opened the telegram and perused it, and gave me an outline of the contents.

What did he say?—He said he was in treaty about a timber freight, and he wanted some information.

By the JURY: Was the telegram in English?—Yes, the telegram was in English.

The LORD CHIEF JUSTICE: He said he was in treaty for a timber freight?—He wanted some information about the port of discharge, as to the draught of water there, and the information of the telegram was to that effect that he said he would decline the freight altogether.

That is what he told you?—Yes.

The LORD CHIEF JUSTICE: He said he should decline the freight?—Yes.

Mr. Serjeant PARRY: The information in the telegram was to that effect, that he should decline the freight altogether?—Yes.

Had you, to your knowledge, ever seen him before?—No, not before that date.

Did you ask him any question as to why he came to your office, or how?—Yes.

Tell us what you said to him?—I asked him how he came to address the telegram to our office, as we were not Norwegian brokers.

What did he say?—He said he had been travelling in company of a German Captain who had recommended our firm.

Did he mention the name of any person he knew at all?—Yes, he also mentioned the name of Mr. DAHL as being acquainted with.

The LORD CHIEF JUSTICE: Is that an acquaintance of yours?—Acquainted with the firm.

Mr. Serjeant PARRY: What did he say to you about DAHL?—He merely referred to him as being known to him.

Did he say who DAHL was, or what his position was?—Yes, he mentioned that he was a broker, which was known to us, as we were brokers also.

The LORD CHIEF JUSTICE: Mr. DAHL is a London broker, is he?—Yes.

Mr. Serjeant PARRY: After he said he would not have anything to do with the freight what did you say to him?—I asked him what his intention was to do then with the ship. He said his intention was to ship to a coal port and to negotiate for freight to a Mediterranean port.

What did you say to him?—I asked him whether he would take a freight through us, and I showed him the freight list of our correspondents at Newport and Cardiff, and pointed out to him that 22s. was quoted from Newport to Alexandria, and we would try, if he would give us authority, to obtain 23s. a ton. He said he was inclined to do so provided he could get 23s. per ton with five guineas gratuity, with one-third of the brokerage to himself.

Did he say anything further at that time about his ship?—Yes, he gave us details of his ship, because if we were going to charter the ship we should want to know the classification the ship had, and he said the ship was classed 5611 in the French 'Veritas.'

Did he tell you where she was lying at that time?—Yes, at Hayle, in Cornwall.

Now you say in the French 'Veritas.' Just tell us what the French 'Veritas' is. Is it a register?—A register of ships in which all foreign ships, nearly all at least, are classed.

The LORD CHIEF JUSTICE: Did he tell you what nationality his ship belonged to?—Yes, the Norwegian flag.

Mr. Serjeant PARRY: I believe you had this book, the French 'Veritas,' in your office?—Yes.

In consequence of what he told you about the class of his ship and the name and so on, did you refer to the French 'Veritas'?—Yes.

To the name of 'Gerda,' I suppose?—Yes.

Did you find any ship there of that name?—No, we could not find a ship to answer to that description.

Did you say so to him?—Yes.

The LORD CHIEF JUSTICE: Could you find a ship of that name?—Yes, but not to answer the description given by him.

Mr. Serjeant PARRY: Upon looking and not finding this did you say anything to him?—Yes, I mentioned that to him.

What did you say?—I said no such ship was in the 'Veritas,' and how could he account for that. He said he could explain that very well, as the ship had only been recently bought by his owner, and that she was formerly called the 'Amazon.'

Did you refer to the French 'Veritas' again?—Yes.

And you found a number of ships named the 'Amazon' there?—Yes.

I believe then you were satisfied with his description?—Yes.

Did he then leave?—No, I took his authority in writing.

The LORD CHIEF JUSTICE: What did he tell you this vessel, the 'Gerda,' was, a schooner, brig, barque, ship, or what?—No, I do not exactly recollect. He gave the capacity of the ship, but I do not exactly recollect whether he said what rigging she was.

Very well; but when looking in the 'Veritas' I should have supposed it would have been a very material element to guide you in your search to see whether she was a barque, ship, schooner, or brig?—We generally go by the class, by the age of the ship, and by the capacity.

Mr. Serjeant PARRY: When did you see him again?—The following Monday.

Had you made communications with some of your correspondents before you saw him again?—Yes, we communicated with our friends in Newport.

What day of the week was it when he first came?—Saturday.

Now, did you see him more than once on Monday or only once?—I am not certain of that.

But you saw him once?—I am certain I saw him once.

Did you have any communication with him on the Monday when you saw him? — Yes; I told him that 23s. was not obtainable, but our friends would place the ship at 22s., other conditions as agreed by him.

What did he say to that?—He agreed to take the rate.

22s. instead of 23s.?—Yes.

Did he call on you the following day, the Tuesday?—Yes.

That was the 1st of April, 1873. Now please tell us what he said to you on that day?—He asked me whether the charter party was all in order.

What did you say?—I said I had no doubt it would be all in order; that we had asked them to forward the charter by post.

That is your correspondents?—Yes.

You might name who your correspondents were?—We had been in treaty with JAMES HANNETT & Co., and F. BEYNON & Co., both ship-owners at Newport.

Were those the gentlemen that you had been in treaty with?—Yes.

When you told him you would forward the charter, what did he say further to you on that day, the Tuesday?—He asked me if I could give him £20 cash.

The LORD CHIEF JUSTICE: What do you mean by give him?—Lend him.

That is a different thing. You mean advance it?—It was merely, according to his statement, to buy a second-hand chronometer which he wanted to purchase of a Captain here and wanted to take with him to Hayle, the place where the vessel was lying.

But I mean he asked for it by way of loan or advance?—Yes; I only wished to explain to you, he said after arriving at Hayle he would remit us the money back.

Mr. Serjeant PARRY: Where was the chronometer to be had?—In London. I do not know the place.

From whom?—From a Captain, he said.

The LORD CHIEF JUSTICE: He would remit you the money from Hayle?—Yes.

Mr. Serjeant PARRY: What did you say to him?—I put him off, saying there was none of the principals in to sign the cheque.

Did he leave on that day, and did you tell him to come the next day?—To the best of my knowledge he called again; he called more than once.

He called again on that day?—Yes.

When he called again do you remember what you said to him?—I am not quite certain what I said to him that day. I think I put him off with excuses to gain time to get the necessary information from a party to whom I had to telegraph on the spot.

The LORD CHIEF JUSTICE: You put him off again?—Yes.

You had to telegraph to whom?—Mr. VIVIAN, LLOYD'S agent at Hayle.

Mr. Serjeant PARRY: The next day did the person you knew as Captain SORENSEN call again?—Yes.

In the meantime had you received an answer to your telegram from Mr. VIVIAN?—Yes.

I must see whether that is the answer you received (handing him a telegram)?—That is it.

Now, when he came did you or did you not call his attention to that telegram?—No.

What did he say then to you when he came again? Did he say anything more about £20?—I could not say for certain; I rather think he asked me if he could have it.

The LORD CHIEF JUSTICE: Do you say you think so?—Yes. I rather think, but I would not swear to that.

Mr. Serjeant PARRY: Was this in the morning, or what time did he call?—In the morning.

Is there a gentleman of the name of COBETT one of the partners in your firm?—Yes.

Is he head of the firm or a partner?—He is a partner.

Did this Captain SORENSEN come again afterwards?—In the morning I laid the charter-party before him which we received from Newport, and I requested him to sign it. He made a slight alteration which I inserted in the charter party, and then signed the name across the Agreement stamp.

Did he then leave or not, and come again afterwards?—He then left, and called again in the afternoon.

When he called in the afternoon was Mr. COBETT present?—Yes.

Who else was present? You say Mr. COBETT was, yourself; were any other gentlemen present?—Yes.

Name them, if you please?—Mr. STETTAFORD was there.

Was he a clerk?—Yes.

Was Mr. SCHAIK there?—Yes.

Was he a clerk also?—Yes.

I believe these gentlemen have left the employment since?—Yes.

Now, when this Captain SORENSEN came again in the afternoon did Mr. COBETT say anything to him on what passed? This telegram was shown to him and an explanation was asked from him.

Was it shown to him or read to him by Mr. COBETT?—To the best of my belief, both shown and read to him.

Now, let us have the contents of that. Will you read it?—"JOHN VIVIAN, LLOYD'S Agent, Hayle. To HOFMAN, SCHENK & Co., Vine Street, Minories, London. No such ship as 'Gerda' has been here for years. Will gladly follow up the matter further if you wish." What did Mr. COBETT say to it?—We asked for an explanation, how he could account for this, which was in downright contradiction to his statement.

What did he say?—He said that it must have been an error, or that the party who telegraphed was not well informed.

Did Mr. COBETT say anything further to him?—Yes.

What?—He said this could not be, and I pointed out that LLOYD'S Agent was on the spot, and was sure to be well informed as to what ships there were in such a small place as Hayle.

Did he say anything in reply to that?—He said he was the master of the ship, and therefore he ought to know best where the ship was.

What, if anything, did Mr. COBETT say to that?—Mr. COBETT told him that he believed his statement was wrong, and asked him to prove his identity by going with him to Mr. DAHL, to whom he had referred in the first instance.

What did this Captain SORENSEN say to that?—He first objected to go because he said he could do his business in our office; he had nothing to do with Mr. DAHL.

What further occurred?—After having made some objection against it he agreed to go to Mr. DAHL.

I believe Mr. COBETT and he went out together?—Yes; followed by the clerk whom I have mentioned before, STETTAFORD.

Did you ever see him again? He never came to the office again, I think?—No.

Did you ever see him again?—I think I did, but of that I am not certain.

Where?—To the best of my belief, it was in Bishopsgate Street.

How long after was that?—I could not say exactly.

About?—This was about March and April that this occurred; I should say about a month, perhaps five or six weeks.

Now, are you quite sure that the man sitting there is the person who called at your office as Captain SORENSEN?—Yes.

Dr. KENEALY: It is impossible for me, my lord, to cross-examine this man without making inquiry.

The LORD CHIEF JUSTICE: Inquiry of whom?

Dr. KENEALY: We must first of all make inquiry of LUIE and of this Captain.

The LORD CHIEF JUSTICE: There LUIE sits.

Dr. KENEALY: Does your lordship think he can instruct me while I am cross-examining? I must ascertain about this Captain.

The LORD CHIEF JUSTICE: What Captain?

Dr. KENEALY: SORENSEN.

The LORD CHIEF JUSTICE: The Witness swears that is the name.

Dr. KENEALY: Well, my lord, I am aware he does. I may be

able to produce Captain SORENSEN. I do not know where. I am supposing there is a likeness between them.

The LORD CHIEF JUSTICE: You can ask whether they are prepared to swear positively, or there may be a likeness.

Dr. KENEALY: He has sworn that, my lord.

The LORD CHIEF JUSTICE: Suppose you have Captain SORENSEN, what cross-examination could we allow?

Dr. KENEALY: He might say, "That is the man."

The LORD CHIEF JUSTICE: If you produce Captain SORENSEN, I will take care that this Witness shall come back again, and give you full opportunity. I think that is right; you are taken by surprise by being told by this Witness that LUIE came to that office under the name of SORENSEN. Like in every other case of identity a man may be deceived, and possibly in the utmost good faith, this gentleman, believing SORENSEN and LUIE to be one and the same, may be deceived, and if Captain SORENSEN can be produced, and this gentleman is asked whether he be the SORENSEN he saw, and not LUIE, it will be most material. If you have SORENSEN here at any time, I am quite sure this gentleman will come back again, and so you may have the opportunity of asking him whether that is, and LUIE not, the man; and if you had Captain SORENSEN here, you could ask him no more.

Dr. KENEALY: I do not know whether Captain SORENSEN can be produced or not. I never heard of him till this moment.

The LORD CHIEF JUSTICE: I mean, what better condition to cross-examine will you be in a month or six weeks hence than now?

Dr. KENEALY: There are two ways of regarding it. First, this Witness may be making an honest mistake. There is another alternative likewise——

The LORD CHIEF JUSTICE: That he comes here to tell us an untruth?

Dr. KENEALY: Certainly.

The LORD CHIEF JUSTICE: Then cross-examine him.

Dr. KENEALY: I know nothing about his antecedents.

The LORD CHIEF JUSTICE: Here is a gentleman in a City house——

Dr. KENEALY: Oh!

The LORD CHIEF JUSTICE: Oh what?

Dr. KENEALY: Your lordship's long experience as a Judge in Criminal Cases——

The LORD CHIEF JUSTICE: My long experience tells me this, that "Oh!" is not an answer to make to a Judge who addresses Counsel.

Dr. KENEALY: If your lordship says that his being so is a complete guarantee for his evidence——

The LORD CHIEF JUSTICE: I do not say so, but I think respectable employment *prima facie* entitles a Witness to be believed to be respectable.

Dr. KENEALY: I cannot tell what the employment is.

The LORD CHIEF JUSTICE: I quite agree, and if you by-and-bye should suggest a reason why you should cross-examine this gentleman as to his antecedents you shall have the opportunity; but with regard to this Captain SORENSEN, I do not see what you can examine this Witness about, unless you produce Captain SORENSEN. He says his conviction is that SORENSEN and LUIE are one. If you can produce SORENSEN and show the Witness is mistaken, you shall have an opportunity of doing it.

Dr. KENEALY: If your lordship will not postpone my Cross-examination, I have no materials to cross-examine upon.

Mr. Justice MELLOR: I wish to ask how many interviews you had altogether with SORENSEN?—I cannot say the exact number, but a great many.

Four, five, or six?—More than that.

More than six?—Yes.

And conversations with him on the business of this ship, and so on?—Yes; he explained to me the port of Hayle, and gave me some particulars about his native country, and the fish on the coast there, and several other things with which he was occupying his time while waiting for the other parties he wanted to see.

Were the opportunities you had such as to enable you to swear with confidence that SORENSEN, the man who passed to you as SORENSEN, is the individual who sits there?—I had ample occasion.

You had ample opportunity?—Yes.

And you are positive he is the man?—I am quite positive.

By the JURY: How did you first come to know that LUIE was the same as SORENSEN? What first brought it to your attention?—My attention was brought by the parties who first made the fact known about it.

The LORD CHIEF JUSTICE: Made what fact known?—This fact known which I have just given. My attention was called by a gentleman who came to our office, and who asked me if I could identify that man, and he then showed me a photograph.

By the JURY: When was that?—That was on Friday morning last.

Have you heard this man speaking?—Not distinctly. I have not paid much attention to that.

Can you tell us whether you recognise his voice?—I am quite convinced of it myself, so that I did not want any further proof.

Mr. Justice MELLOR: You saw him, did you, last Friday night?—No.

Mr. HAWKINS: He was not one of the two.

Mr. Serjeant PARRY: We took them in order, because he first saw him. Mr. PETERS is the managing clerk in this firm. Some of the other clerks are here, and they are desirous that Mr. COBETT should come, and if the last Witness could go back and take his place, he would be able to come here. I only mention it because he will be within call in a reasonable time.

JOHN STETTAFORD, sworn.

Examined by Mr. Serjeant PARRY.

Are you a clerk in the employ of Mr. DAVID BROWN, of 146, Leadenhall Street?—Yes.

And were you formerly clerk to Messrs. HOFMAN, SCHENK, and Co., Vine Street, Minories?—Yes.

Were you there in March and April last?—Yes.

Do you remember a Captain SORENSEN coming to the office?—Yes, that is him (pointing to LUIE).

Do you see him now?—Yes, and I identified him on Friday.

Is that person there, calling himself JEAN LUIE, Captain SORENSEN?—That is Captain SORENSEN.

I believe you with a Mr. SCHAIK were here on Friday afternoon, and identified him?—Yes.

How often did you see him at the office?—I should think about a dozen times.

Do you remember upon one occasion you were directed to watch him after he left the office?—Yes, by Mr. COBETT.

Did you do so?—Yes, and traced him to a low coffee-house in Leman Street, Whitechapel.

Was that to any sailors' home?—I think it is, but I would not be positive; it is near a railway.

I believe you came back?—Yes, and reported the circumstance.

Were you present when Mr. COBETT went out with him to go to Mr. DAHL?—I went with him.

And you heard that conversation?—I heard that conversation.

Going to Mr. DAHL?—He did not go to Mr. DAHL.

Can you tell us where Mr. DAHL'S office is?—I do not know.

All you know is that Mr. COBETT and Captain SORENSEN went out to go to Mr. DAHL?—Yes.

After a little time what happened?—He would not go.

How far had he got?—As far as Crutched Friars.

Mr. Justice LUSH: With Mr. COBETT?—With Mr. COBETT.

The LORD CHIEF JUSTICE: Tell us exactly what passed?—Mr. COBETT said, "Are you going to take us to Mr. DAHL?" He said, "You have doubted my word, I will not take you anywhere."

Mr. Serjeant PARRY: What did Mr. COBETT say to that?—He said, "I have a good mind to give you in charge for trying to extract money under false pretences."

What did he say, or Mr. COBETT further say, "I have a good mind to give you in charge." Did he go on to say anything more?—Yes, LUIE said, or Captain SORENSEN, "Well, if I pay your expenses you will let me go?" and Mr. COBETT said, "I should like to see where you live," and he said, "I do not live anywhere. I lodge at a commercial hotel, as I told you before." Mr. COBETT said, "Well, take us there," and he took us to a low coffee-house in the Minories.

Not the same coffee-house?—Not the same coffee-house I traced him to, called the 'Sunbeam.' He asked a woman, "Have I lodged here?" She said, "One night, and paid a shilling; you had nothing to eat."

Go on and tell us?—He promised to come back in two hours, and I saw no more of him from that day until I saw his likeness in Moorgate-street.

Mr. Justice LUSH: He promised to come back when?—In one or two hours.

Mr. Serjeant PARRY: You never saw him again?—I never saw him again. I saw his likeness.

The LORD CHIEF JUSTICE: Where did you see his likeness?—In Moorgate-street.

Was your attention called to the likeness by anyone?—No.

Not by a Mr. SCHAIK, or did you call Mr. SCHAIK'S attention to it?—No.

The LORD CHIEF JUSTICE: Then you recognised the man at once?—At once, my lord.

Mr. Serjeant PARRY: Is that the photograph you saw?—That is the same.

And you recognised it immediately?—As Captain SORENSEN.

And when you came here on Friday you say you identified him?—I identified him.

Are you sure he is the man you knew as Captain SORENSEN?—As positive as I am of my own existence.

Dr. KENEALY: My lord, I am in the same position with reference to this Witness, and therefore I ask for a postponement.

The LORD CHIEF JUSTICE: Let me look at the photograph. (It was handed to his lordship.) How came you to come here on Friday?—Well, I mentioned the matter to Mr. SCHAIK, a friend of mine in the same office. I said, "Come and look at the likeness in Moorgate-street, and see if you do not recognise the Captain who tried to swindle HOFMAN, SCHENK and Co."

I only want to know how you came, without going through this conversation, on Friday?—Well, we went to Mr. BOWKER'S office.

Your friend and you?—Yes.

Was he one of the clerks in that office?—In the office where I am employed now.

Mr. Justice MELLOR: Mr. BROWN'S?—Mr. BROWN'S.

The LORD CHIEF JUSTICE: Had he seen SORENSEN?—He had seen his likeness, and at HOFMAN and SCHENK'S.

Was he a clerk?—He was a clerk at the same time as I.

And he had seen Captain SORENSEN at the same time as you?—Yes.

And you told him to go and look at this likeness of SORENSEN in Moorgate-street?—Yes.

Did he say whether he recognised SORENSEN?—Yes.

Then upon his coming back, did you and he come here?—No, we let it rest for a week, because we were too busy.

However, you went to Mr. BOWKER'S?—In Bedford-square.

Mr. HAWKINS: Not this Mr. BOWKER, the brother.

The LORD CHIEF JUSTICE: However, the result was you came here on Friday?—Yes.

Mr. Serjeant PARRY: Will your lordship ask him about Mr. POLLARD?

Dr. KENEALY (to the Lord Chief Justice): I must object to all these questions and answers by your lordship.

The LORD CHIEF JUSTICE: You object to my questions?

Dr. KENEALY: Yes.

The LORD CHIEF JUSTICE: Then, Dr. KENEALY, I overrule your objection (laughter). A Judge has a right to ask such questions as he thinks essential to elicit the truth. I told him not to tell the conversation; but what he did say was this, that he desired his brother clerk to go and satisfy himself of the likeness exhibited in Moorgate-street with the man who had come to their office. The clerk did recognise him, and the result was that the two of them went to Mr. BOWKER'S office, Bedford-square. Counsel who take an objection to these questions and answers, in my opinion, know very little about the law of evidence.

Mr. Justice MELLOR: What I want to ask is with reference to your appearance on Friday; did you see Mr. POLLARD, the Assistant-Solicitor to the Treasury?—I came to the door, my lord, and Mr. POLLARD said, "Come forward."

Was that the first time you saw Mr. POLLARD?—After the letter was handed in for Mr. BOWKER.

Then a letter was handed to Mr. POLLARD, and then Mr. POLLARD asked you to come forward?—Yes.

Were you in Court when a letter was handed up to the Judge?—Yes.

Was that the letter which was handed to Mr. POLLARD?—That was the letter that was handed to Mr. POLLARD. I did not hand it.

Mr. Justice LUSH: It was from Mr. BOWKER?—It was from Mr. BOWKER.

Mr. Justice MELLOR: Then before anything was done you handed that letter to Mr. POLLARD?—Yes.

Had you had conversation besides that letter?—No, the first time I came into Court.

What he did was to ask you to come forward?—Yes.

And you were in Court when the Judges came back again?—Yes; and stood there opposite the Claimant.

And opposite LUIE?—Opposite LUIE.

By the JURY: Did Captain SORENSEN wear a similar kind of hat to the one in this photograph?—I believe he wore a dark hat, but similar in shape. He was dressed precisely the same in blue Guernsey clothes.

Mr. PETER VAN SCHAIK, sworn.

Examined by Mr. Serjeant PARRY.

Are you now a clerk with Mr. DAVID BROWN, 146, Leadenhall-street?—Yes.

Were you in the months of March and April last a clerk with Messrs. HOFMAN, SCHENK, and Co.?—Yes, I was.

Did you see a person calling himself Captain SORENSEN at your office in those months?—Yes, I saw him many times.

Did you hear him speak to Mr. PETERS?—Yes.

The gentleman who has been examined here?—Yes.

You say many times. How many times altogether?—I do not know. The business of the charter was about five or six days, and some days he called five or six times.

He called five or six times, and the business was on five or six days?—Yes.

Where is he now?—That is the man I knew by the name of Captain SORENSEN (pointing to LUIE).

I believe you saw a photograph of him before you came here on Friday?—I saw a photograph last Saturday week.

Is that the photograph you saw (handing one to Witness)?—No, that is not the same.

It is not the actual one?—No, I saw another one.

That is not the photograph you saw. Did you recognise in the photograph you saw Captain SORENSEN?—Yes; I stood at the shop a quarter-of-an-hour because I was not sure at the beginning if he was the man or not.

When did you first see the man himself?—After I saw the photograph.

Yes?—On Friday here in the Court.

And when you saw him what opinion did you form?—That he was the same man I saw in March and April.

Have you any doubt about it at all?—No doubt about it at all.

Mr. Justice LUSH: Did you come down with the other Witness?—With STEITAFORD, yes.

Mr. Serjeant PARRY: On Friday?—Yes.

And did you see this gentleman, Mr. POLLARD?—Yes.

And do you remember a note being handed to him?—Well, I was told there was a note handed to him, because I was not in the Court at the time.

Dr. KENEALY: I understand your lordship will not allow me to have the cross-examination of this Witness postponed.

The LORD CHIEF JUSTICE: I will if you show any reason for having him back.

Dr. KENEALY: How can I? A man I have never heard of until this moment.

The LORD CHIEF JUSTICE: I mean if in the course of to-morrow or so you find material to make an application to the Court to have the Witness recalled, certainly you should have an opportunity. I quite understand that Counsel may be taken so by surprise by evidence of this kind that an opportunity ought to be afterwards afforded to reopen the matter, and if Dr. KENEALY can satisfy us that there is sufficient reason why he should have an opportunity of recalling this Witness to be cross-examined, surely there will be no objection to that.

Mr. HAWKINS: Whatever your lordship thinks right will be done cheerfully.

The LORD CHIEF JUSTICE: I mean even in the course of his address.

Mr. HAWKINS: Whatever your lordship thinks fair shall be done. We were ourselves taken by surprise, of course.

Mr. FREDERICK HAMBLIN, sworn.

Examined by Mr. Serjeant PARRY.

Are you junior clerk in the employ of Messrs. HOFMAN, SCHENK, and Co.?—Yes.

Were you so in March and April, 1873?—Yes.

Did you see in those months in your office a person calling himself Captain SORENSEN?—Yes.

How often do you think you saw him?—Three or four times.

Have you seen that person here this morning?—Yes.

Who calls himself JEAN LUIE?—Yes.

Is he the person known as Captain SORENSEN in your office in March and April last?—Yes.

Now, are you quite sure of that?—Yes.

Mr. Serjeant PARRY: We have sent for Mr. COBETT, my lord; he is on his way, I should think.

Mr. HAWKINS: I do not know whether your lordship thinks it right—you have power to do it without calling on Mr. POLLARD to make an affidavit—to ask him as to this.

The LORD CHIEF JUSTICE: I think we will hear further what this gentleman who has still to come has to say with reference to this matter. Then it will be time enough to consider that.

Mr. HAWKINS: Mr. POLLARD did not act at all upon any evidence given by Mr. COBETT.

The LORD CHIEF JUSTICE: I know.

Mr. HAWKINS: I only mention the fact to your lordship.

The LORD CHIEF JUSTICE: I think it better hearing this part of the Case out before we deal with the question of whether we shall call on Mr. POLLARD for any answer or not. You say the Witness will be here presently.

Mr. Serjeant PARRY: He was sent for long before Mr. PETERS left the box. We had great difficulty in inducing him to leave his business.

The LORD CHIEF JUSTICE: He has to come from the Minories.

Mr. Serjeant PARRY: Yes.

The LORD CHIEF JUSTICE: Then we will come in as soon as he comes.

[The Court adjourned for luncheon shortly before one o'clock, and reassembled at two o'clock.]

Mr. IVO COBETT, sworn.

Examined by Mr. HAWKINS.

Are you a partner in the house of HOFMAN, SCHENK and Co.?—I am.

No. 4, Vine Street, Minories?—Yes.

Mr. PETERS, who has been examined here this morning is one of your clerks?—Yes.

Do you remember in the early part of the present year seeing a person who called himself Captain SORENSEN?—I do.

Do you remember the day on which you first saw him?—The 29th of March, Saturday.

Where did you see him?—At our office, 4, Vine Street, Minories.

Have you seen that person to-day?—I have.

Will you point him out?—(After deliberation) That is the man (pointing to LUIE). He had his hat on before, or I must have seen his likeness sooner. He is a little stouter than he was, and his beard is thicker.

Mr. Justice MELLOR: Are you quite satisfied he is the man?—Quite satisfied.

Mr. HAWKINS: Now, will you tell me what took place between you and him when you first saw him on the 29th of March?—He asked for a telegram addressed to Captain SORENSEN, of the 'Gerda.'

Did you hand him the telegram, or was it handed to him in

your presence?—It was handed to him either by myself or my clerk, Mr. PETERS.

Did he read it in your presence?—He did, and showed it.

Upon his showing you that did you have any conversation with him?—Yes, I apologised for having opened the telegram.

The LORD CHIEF JUSTICE: You opened it?—Yes; the telegram was, with the other letters, lying on my desk, as usual; and only those intended for my opening are generally left on my desk; and having made a mistake in opening this telegram, not intended for me, I was concerned, and I put myself to the trouble of personally inquiring of two or three brokers whether such a ship had been addressed to them; and I was very much relieved when a person calling himself Captain SORENSEN called in the afternoon and asked for that telegram; so I took this opportunity of telling him that I opened the telegram, and I apologised for doing so.

Mr. HAWKINS: Now tell us what took place on that occasion?—A telegram purporting to be from Queenstown, stating only a little water at Youghal. I did not take much notice of it, but that is my impression what it contained, and he said, "I shall not take that freight now;" and finding he was relieved of the freight, I proposed other employment, and that led to the negotiations of which I think some papers are in your possession.

Upon that occasion was any application for money or an advance made to you?—Not on the Saturday.

And when was the next time you saw him after the Saturday?—I think he came back a second time on the Saturday. At all events he returned on the Monday, but our correspondents' book would confirm that, if I might be allowed to refer.

The LORD CHIEF JUSTICE: Certainly.

Is it important whether he came back a second time?

Mr. HAWKINS: Is it your impression?—It is my impression that he gave us an extended time to carry the business through, and I wrote about it.

Mr. Justice MELLOR: What you had proposed to him?—Yes. I took it down on rough paper, so that I might have some authority in hand to send a telegram away. That rough paper is in possesion of one of your gentlemen.

Mr. HAWKINS: When was your next interview with him?—On Monday.

Now be good enough to tell us what conversation you had with him on Monday?—The freight which he wanted was 23s., and we could only obtain 22s., and we tried another channel to obtain the 23s., but were not successful. Finally he consented to take 22s., but I am not sure whether it was on the Monday or whether on the Tuesday.

The LORD CHIEF JUSTICE: However, he agreed to take 22s.?—He agreed to take 22s.

With some other terms?—With some other terms; he wanted cash payment.

Mr. HAWKINS: Was it on the Monday that he made any application to you for money?—I think it must have been on the Tuesday when the transaction was more complete. I would not be certain whether it was on the Monday or Tuesday.

Tell us what that application was?—My clerk told me that the Captain had asked for money to buy a chronometer.

Dr. KENEALY: Are we to have this conversation?

The LORD CHIEF JUSTICE: Not beyond that. I suppose this was an application from your clerk for instructions as to what he was to do, or simply a communication?—It was a communication made to me by my clerk.

Mr. HAWKINS: The communication had been made to you by your clerk?—Yes.

And did you see Captain SORENSEN with reference to that application?—Yes, he asked me, I think it was, for £20.

The LORD CHIEF JUSTICE: Captain SORENSEN did himself?—Yes, he asked me myself. When he came back I said "Oh, yes," and I began to write.

As an advance?—He desired £20 for the purpose of purchasing a second-hand chronometer.

I say as an advance from you?—As an advance. I said, "Oh, yes!" and began to write out the receipt. This was done perhaps in three or four seconds, and while in the act of writing out the receipt, it occurred to me as very singular that he should ask for an advance under such circumstances; and then I went upstairs to think it over, simply leaving the receipt unfinished on my desk.

Mr. HAWKINS: I believe you determined to make further inquiries?—I did.

Did you have him upstairs?—Yes, I think I called him upstairs and told him that the request was singular; I was only one of three partners, and could not without the consent of the others give him the advance.

What did he say to that?—He said he could do without that, he had got Mr. DAHL.

Did you make him a reply?—I said it would be unfair to ask Mr. DAHL for an advance and give us the chartering of his vessel.

Did you add anything to that?—Desired him to return again.

After that you telegraphed to Mr. VIVIAN?—Yes.

At Hayle?—At Hayle.

Mr. Justice MELLOR: Had he described before that the vessel to you, or was that to your clerk?—He described it to me in the presence of Mr. PETERS.

Before you telegraphed to Mr. VIVIAN?—He described it on the Saturday, the first day.

You were present when he described the vessel the 'Gerda'?—Yes, he described the vessel to me, I believe, first in the presence of Mr. PETERS.

Lying at Hayle?—Lying at Hayle, and gave the vessel's name, what she was formerly called. I could not trace her in any classification book.

Mr. HAWKINS: Then you telegraphed to Hayle and received a reply?—Yes.

The reply we have already in?

The LORD CHIEF JUSTICE: Yes.

Mr. HAWKINS: That is the telegram you received (it was handed to the Witness)?—That is the telegram we received in reply.

Now, after the receipt of that telegram by you, did Captain SORENSEN call again?—Yes.

Do you remember how soon after that telegram was received?—He was in our office several times a day, and Mr. PETERS, who was indoors all day, saw him in my absence; I was out generally.

What you yourself personally know is all I trouble you with. But, however, did you see him on his calling after you had received that telegram?—I did.

And did you then have a conversation with him about it?—I did; I taxed him with the vessel not being there.

The LORD CHIEF JUSTICE: At Hayle?—At Hayle.

Mr. HAWKINS: What did you say to him? Do you remember your language?—No, I do not exacely.

Did you show him the telegram?—Yes, when he persisted in stating that she was there.

The LORD CHIEF JUSTICE: Before you showed him the telegram he persisted in saying that the vessel was there?—That the vessel was there.

Mr. HAWKINS: What did he say when you showed him the telegram?—I told him this came from a good authority, LLOYD'S agent; and he said, if I telegraphed to the Collector of Customs he would be the best authority.

What said you to that?—I expressed myself satisfied with this information.

The LORD CHIEF JUSTICE: With whose information?—With the information of the telegram of Mr. VIVIAN.

Mr. HAWKINS: As LLOYD'S agent?—As LLOYD'S agent.

Did you say more to him?—I expressed my surprise at his behaviour, and told him he had exposed himself to be given in charge for it.

Did you tell him what for?—For an attempted fraud.

What did he reply to that?—He said he had done nothing wrong, he had got no money from us.

Will you tell us how the conversation proceeded?—I told him at all events he had put us to some expense in telegrams. Oh, he would pay that. And I asked him to take me to Mr. DAHL.

What did he say to that?—He said he would. I desired my clerk, Mr. STETTAFORD, to accompany me.

Now will you tell us all that occurred after that?—We went out together, and when we got near the railway arch in Crutched Friars, he suddenly stopped and declined to go to Mr. DAHL'S with me.

The LORD CHIEF JUSTICE: Do you remember what he said?—"I am not obliged to go with you," or words to that effect. The exact words I could not perhaps give. He declined to go with us. I threatened to give him in charge if he did not. He still declined, and said he would get the money from his lodgings.

The money to do what?—The expenses, something about 20s.

Mr. HAWKINS: What happened next?—I insisted on accompanying him to his lodgings, and Mr. STETTAFORD accompanied me.

Where to?—To a small coffee-house in the Minories. He walked right towards the back of the coffee-shop, as it would be called, near the bar. I forget what words he used, but he seemed to ask for a paper and looked confused. I said to the person who kept the coffee-house, "Do you know this person or party?"

The LORD CHIEF JUSTICE: Was it a man or a woman?—It was a woman. She said, "Yes, he has slept here a night or two, and paid a shilling for his bed." I said, "Is he stopping here now?" She said, "No, it was some few days ago since he was there." This quite satisfied me that his account was altogether untrue, so I thought the sooner I got rid of him the better.

Mr. HAWKINS: Did you leave him there?—We came outside together, and he would have conducted us to another place,

The LORD CHIEF JUSTICE: He proposed to do that, did he?—Well, I just insisted on accompanying him further, but as he was going in an easterly direction I did not care to be exposed to personal violence perhaps; I did not know what might occur, I thought it better to receive his promise to send the money and to part company.

Mr. HAWKINS: Then you parted company, he promising to send?—Yes.

Did the money ever come?—I took his word to send it and never saw him—the money never came, and I do not recollect seeing him until this morning.

The LORD CHIEF JUSTICE: You never heard anything further from him?—I heard nothing further from him.

Dr. KENEALY: I am in no position to cross-examine unless your lordships give me a postponement.

The LORD CHIEF JUSTICE: I do not see what you gain by a

postponement. This gentleman has only spoken to certain circumstances within the knowledge of himself and his clerks, and we have heard himself and his clerks examined.

The WITNESS: I may say, my lord, that I came here with great reluctance. It is only sheer necessity that brings me here, as we are extremely busy to-day.

Mr. HAWKINS: We had to send specially for this gentleman. It is so, my lord; he was extremely unwilling to come.

The LORD CHIEF JUSTICE: Very well, there is no question you wish to ask him about.

Dr. KENEALY: Not now.

The LORD CHIEF JUSTICE: Then what do you propose?

Dr. KENEALY: To recall JEAN LUIE, and then I propose to ask your lordship to give me time to make inquiries as to this Captain SORENSEN.

The LORD CHIEF JUSTICE: We will see about that. You propose to recall LUIE with a view of meeting this evidence?

Dr. KENEALY: Yes.

The LORD CHIEF JUSTICE: Of course only with reference to this evidence.

Dr. KENEALY: Of course, if your lordship binds me down to only with reference to that, but I should have liked to have gone further.

The LORD CHIEF JUSTICE: You cannot, because it so happened that not being aware of these facts, Mr. HAWKINS in cross-examination did not cross-examine him as to it, therefore as regards these interviews and conversations as to which evidence has been given to-day you are entitled to call JEAN LUIE back in order to contradict his evidence if he is in a condition to do so. Of course it must be confined to that; it speaks for itself. If you wish to call him back let him be called.

JEAN LUIE, recalled.

Further examined by Dr. KENEALY.

Were you in Court When PETER PETERS, PETER VAN SCHAIK, FREDERICK HAMBLIN, JOHN STETTAFORD, and the last Witness gave their evidence?—I was.

You have heard their evidence?—I have.

Now, is it true that you called at the office of HOFMAN, SCHENK, and Co., 4, Vine Street, Minories, about the 29th of March last, about a telegram?—I do not know where it is.

The LORD CHIEF JUSTICE: Just answer the question. Did you call at their office?—I did not, my lord; I do not know where it is.

Dr. KENEALY: Was any telegram handed to you by the first Witness, PETER PETERS?—I never saw a telegram in England.

The LORD CHIEF JUSTICE: If he was not there he could not see a telegram. It is involved in it.

Mr. Justice LUSH: If he never called there nothing of this could have taken place with him.

Dr. KENEALY: I am going to take him to negative it all, my lord.

Now, did you ever open a telegram which you received from this Witness?—Sir, I never had a telegram in my life in England; only letters, and they are from the United States.

Did you ever tell that man, or any of those persons you have seen here, that your name was SORENSEN—that you were Captain SORENSEN?—I never saw these people in my life.

The LORD CHIEF JUSTICE: Did you go with them to a coffee-house?—I have not, my lord—never.

The LORD CHIEF JUSTICE: Could that coffee-house in the Minories be found?

Dr. KENEALY: Did you ever tell him that you were the master of a vessel called the 'Gerda,' at Hayle?—I don't know where Hayle is.

Mr. Justice MELLOR: Did you ever tell him that you were the master of a vessel at Hayle, is what you are asked?—Never, my lord—never.

Dr. KENEALY: Did you ever mention to him a person of the name of DAHL as being able to recognise you?—I do not know any DAHL. I know a DAHL living, I think, somewhere in William Street, New York.

The LORD CHIEF JUSTICE: This is a Mr. DAHL, a ship-broker in London?—No, my lord, I do not know him.

Dr. KENEALY: Did you ever tell him you had your ship lying at Hayle in Cornwall?—I never was master of a ship.

Did you ever tell him that?—I never told him that; I do not know where the place is.

The LORD CHIEF JUSTICE: Never mind; you might have told him that, although you do not know the place?—But I never did, my lord.

That is a short answer?—It is a mistaken identity, that is all.

Dr. KENEALY: And that she was formerly called the 'Amazon'?—No, I know an 'Amazon,' but that is an American ship belonging to Charlestown.

Did you ever ask him to make an advance of £20?—No. Why should I ask that, because I had plenty of American dollars with me—notes changed up here close to Regent Street? I did not want any money.

Mr. Justice MELLOR: Did you ask him for that?—I have never seen the man, my noble lord.

To buy a second-hand chronometer?—No, my lord, no.

Dr. KENEALY: Where were you in March and April last?—On Lake Michigan, on board the 'Ironsides'; and that vessel was first broke up in March and April, and did not leave until May when I met a man there, a substitute in the middle of May, and came over on this unfortunate affair.

The LORD CHIEF JUSTICE: Came over on this unfortunate affair?—I did indeed, in consequence of my wife.

You say this unfortunate affair?—This unfortunate affair, I mean to say that I have to attend here.

Dr. KENEALY: Who is the Captain?—The Captain when I left the 'Ironsides' was BURROWS. No; his name was HARRIS then. We had three changes in the twelve months.

But in March and April last?—March, April, and May I was on board the 'Ironsides'; in fact I have been on board her about two years.

And then she was commanded by Captain HARRIS?—The last one. I left him.

Can you tell me the name of any Officer on board the 'Ironsides' there was besides Captain HARRIS the Commander?—We were running passengers over from one railway station to another; and we ran down from Buffalo across two lakes, and came up Lake Michigan to Chicago.

The LORD CHIEF JUSTICE: Has the last Witness gone, or Mr. PETERS?

Dr. KENEALY: Can you tell me the names of any Officers who were on board the 'Ironsides' in March and April last?—Captain HARRIS was Commander of her, and Mr.———, we called him the mate. We change mates very often, one steamer to another. The last one was Mr. BUTLER.

What was he on board the 'Ironsides?'—He was mate, in fact we called him the mate who stands and steers, every one of them.

Do you remember the name of any other Officer at that time?—No, I cannot now bring to my memory any of the other Officers at present. BUTLER was the mate, and HARRIS was the Captain when I left them.

The LORD CHIEF JUSTICE: Are those Witnesses in Court?

Mr. HAWKINS: No, they are gone.

The LORD CHIEF JUSTICE: It should not have been allowed.

Mr. HAWKINS: Your lordship permitted Mr. PETERS to go.

Dr. KENEALY: But there are two.

A JURYMAN: I think there is one in the gallery.

The LORD CHIEF JUSTICE: If there is any Witness here let him come down.

Dr. KENEALY: Can you tell me when you left the United States?—I left the United States in the middle of May.

The LORD CHIEF JUSTICE: That he has told us already, that is the statement they called the Witnesses to contradict.

The WITNESS: I left the United States in the middle of May, my lord.

Dr. KENEALY: Do you remember the ship in which you came over?

Mr. HAWKINS: I must object to this.

The LORD CHIEF JUSTICE: This has been gone into before; it is not contradiction, it is to contradict this man that they call the Witnesses, and it does not entitle you to go over the ground again.

Dr. KENEALY: I do not think the name of the ship was given in which he came over.

The LORD CHIEF JUSTICE: The fact of the time he came here?

Dr. KENEALY: I am entitled to ask the fact. I apprehend I am entitled to ask him anything relating to the months of March and April, that shows he was in the United States or on his voyage to this country.

The LORD CHIEF JUSTICE: I think so.

Dr. KENEALY: Do you remember the name of the ship in which you came over?—The 'Circassian.'

And who is she commanded by?—I do not know.

From what port did she sail?—New York.

And at what port did you land?—We landed at Liverpool.

Can you tell me when you landed at Liverpool?—It was the beginning of June.

How long did you stay at Liverpool?—I only came by rail to Folkestone, and then from Folkestone I went over to Ostend.

You did not make any stay at Liverpool?—I did not.

You came to Folkestone by rail from Liverpool?—Yes; and from Folkestone to Ostend, and from Ostend went to Antwerp, and from Antwerp to Brussels, and down again to Antwerp, and worked back again to Ostend.

Do you know the name of the ship by which you went from Folkestone to Ostend?—I do not. I think it was a packet running across occasionally. I really do not know the name.

How long did you stay at Ostend before you went on to Antwerp?—I stayed at Ostend only a few hours, and went by rail down to Antwerp.

The LORD CHIEF JUSTICE: I do not see how this is contradiction, because this is all in June. The question we are on is whether this Witness was in England in the months of March and April.

Dr. KENEALY: My lord, I have no opportunity of ascertaining anything about this Witness's movements after he came to England, and now I candidly tell your lordship, I am putting questions to him that if I can ascertain the names of the persons where he stayed in foreign parts, Brussels or anywhere else, I shall ask your lordship to allow me to call these persons.

The WITNESS: I stayed at Mrs. CHARLES'S, in Antwerp.

Dr. KENEALY: I am really fishing, I do not know what the man is going to say.

The LORD CHIEF JUSTICE: It would be much better to get it from him. There is no occasion to examine him on this. It is not relative to the present inquiry, which is whether he was in England in March or April?

The WITNESS: I never saw March or April in England.

The LORD CHIEF JUSTICE: You say so.—I never was in England in my life until now. Baron FALCKENBERG will tell that when he comes.

Dr. KENEALY: Your lordship thinks it is not material his being in the mouth of June in Belgium?

The LORD CHIEF JUSTICE: No, unless you show he was not in England in March or April.

Dr. KENEALY: It goes to strengthen his narrative.

The LORD CHIEF JUSTICE: I cannot think so. He may have gone over to Belgium in May or June. That does not seem at all to touch the question whether a man is in England in March or April. If you can show that he was in this steamer 'Ironsides,' in March or April, it would be an answer, and show there was a mistake as to identity, and he was not in England at that time; but to show that he was in Belgium in June does not touch the question at all. He may have been in England in March and April, and gone to Belgium in June.

Do you know whether there is a passport necessary between Folkestone and Belgium?—I was asked about a passport. They asked me where I came from. I said from the United States, and they told me coming from the United States it was not required.

Then you had no passport?—No, I had not.

Do you know this coffee-shop called the 'Sunbeam'?—Where? Upon my word, I do not.

The LORD CHIEF JUSTICE: In Whitechapel?—I do not.

Dr. KENEALY: Leman-street?—No, I do not know anything of the streets.

Do you know any coffee-shop at all called the 'Sunbeam'?—I do not.

Did you ever go with any of those Witnesses who were called here to-day to any coffee-shop in the Minories?—No, I never went to any of those coffee-shops that they mentioned. They are mistaken. I may be like a certain individual who they are talking about, but I am not the man.

Is it true that Mr. COBETT threatened to give you in charge for attempting to get money from him under false pretences?—I do not know the gentleman.

Did you ever promise to send him any sum of money to make up for his expenses that he says he was put to about you?—My dear Sir, I never was in any debt or difficulties anywhere in England.

Mr. JOHN STETTAFORD, recalled.

Examined by the LORD CHIEF JUSTICE.

Now, when Captain SORENSEN was at the office of HOFMAN and COMPANY, did you hear him speak?—Yes.

You have heard the Witness JEAN LUIE speak just now in that witness-box?—He spoke in the same manner then. Better English now.

Do you recognise the sound and tone of the voice?—Yes, the same as I said on Friday.

I do not say about Friday, I am asking now. You have heard him examined in the witness-box?—Yes.

Do you recognise the tone of voice and foreign accent in LUIE that you heard in SORENSEN?—Yes, the same peculiar manner and utterance.

Mr. HAWKINS: There is one question I should like to ask this Witness. I rather think he has been to the 'Sunbeam' for the purpose of seeing the landlady.

The LORD CHIEF JUSTICE: Have you been to the 'Sunbeam'?—Yes.

Did you see the landlady?—The landlady is bedridden.

Not in a condition to be brought here?—Not in a condition to be brought here nor to be spoken to.

You mean she is in that state of illness?—She is dangerously ill.

Dr. KENEALY: Did this man see her? I understood she was not to be spoken to.

The WITNESS: They would not allow us to speak to her.

The LORD CHIEF JUSTICE: You were not allowed to speak to her?—I was not allowed to speak to her.

Was any reason given?—Because she was bedridden, and the doctors would not allow it.

A JUROR: Was it the same woman that answered the questions the day he went there?

The WITNESS: I think so. They say several people have left since March.

Mr. Justice LUSH: Have left?—Have left the place, but still the same landlady.

The LORD CHIEF JUSTICE: And she could not be spoken to?—She could not be spoken to.

Mr. PETER VAN SCHAIK, recalled.

Examined by the LORD CHIEF JUSTICE.

Did you hear Captain SORENSEN speak when he was in the office?—Yes, I did.

More than once?—Many times. He has often spoken to me.

Have you heard LUIE just now examined?—Yes.

Do you recognise the voice or not?—Perfectly well. It is the same person as I did hear with Captain SORENSEN.

And the same accent?—Yes, my lord.

JEAN LUIE, recalled.

Further cross-examined by Mr. HAWKINS.

You said that you came from New York to Liverpool?—I did.

What line of packets does the 'Circassian' belong to?—I do not know.

You do not know?—I think it is—well, I am not certain, Cunard or Inman line.

Mr. Justice LUSH: Steamer or sailing vessel?—Steamer.

Mr. HAWKINS: Either Cunard or Inman?—Either of them—I think it is. I am not positive to swear to that.

Did you come over in your own name?—Most decidedly I did.

Did you give your name?—I did.

What day did you arrive in Liverpool?—I arrived in Liverpool in the early part of June.

Early in June?—Yes.

You never mentioned that when you were cross-examined before?—You never asked me.

I think you will find you said you went from New York to Antwerp?—Overland. I came to Liverpool; I had to go on with the rails.

From Folkestone to Ostend?—From Liverpool to Ostend.

I thought you said just now you came from Liverpool to Folkestone?—From Liverpool to Folkestone?

Yes?—I came from Liverpool to Folkestone; from Folkestone to Ostend by the steamer.

What was the name of the boat you left Folkestone in?—I do not know. I was asked that by Dr. KENEALY.

Was it a regular steamer between Folkestone and Ostend?—I left Folkestone somewhere about four o'clock.

Was it a regular steamer?—Yes, one that plies between——

Plies between Folkestone and Ostend?—Yes.

The LORD CHIEF JUSTICE: Do you mean to say that there is a steamer that plies regularly between Folkestone and Ostend?—There are boats, I suppose. I do not know how many ply there. I left Folkestone about four o'clock for Ostend.

What was the name of the vessel?—I cannot recollect it. In fact, I did not ascertain it, in consequence of I wanted to get there as soon as I possibly could.

That is quite possible; but that would not interfere with your knowledge. You may have forgotten it?—I think it was a boat that carried the mail.

From Folkestone to Ostend?—I think so. I think she carried letters with her.

By the JURY: Did it meet the train?—Up in Ostend.

Folkestone?—About half-an-hour after I came to Folkestone I went into a little house kept by an old man there, and took a little bit of refreshment, and went away from there down to the pier on board of the boat.

The LORD CHIEF JUSTICE: At Folkestone?—Yes.

Mr. HAWKINS: How did you get from Liverpool to Folkestone?—By rail.

To London first?—Never.

Never to London?—No.

Which way did you go?—How do I know?

I do not know at all?—I passed all over the land.

The LORD CHIEF JUSTICE: Do you mean you do not know how you got from Liverpool to Folkestone?—I went with the rail.

There is no rail from Liverpool to Folkestone?—I had to change three different stations.

Where?—That I cannot tell you. I do not know England. I asked the guards, and asked them to go to the nearest train, and I had the next train——

Mr. Justice MELLOR: Where did you take your ticket?—Liverpool.

Where to?—To Folkestone.

The LORD CHIEF JUSTICE: From Liverpool to Folkestone direct?—Direct to Folkestone.

Through ticket?—Decidedly. I had to change three times to get into Folkestone.

By the JURY: How much did you pay for it?—23s.

The LORD CHIEF JUSTICE: First, second, or third?—Third-class.

By the JURY: How many hours were you travelling?—We left about six o'clock in the evening, and we arrived at eleven the following morning.

At Folkestone?—Yes.

Mr. HAWKINS: Do you not know whether you came through London or not?—I do not.

Do you know London?—I do not know London at all, except now I have been at the meetings for Sir ROGER.

Do you mean you do not know if you came through London to get to Folkestone?—Really I do not know.

Are you serious in saying that?—I am serious in saying that. Am I bound to go through London for that?

That is what you seriously mean to say, you do not know whether you came through London?—I really do not believe it.

You do not know?—I do not think I did.

How long did you stop at Liverpool?—I do not think I stopped there more than two or three hours.

Are you sure?—Yes, about sure.

Eh?—Yes, nearly certain.

Are you quite certain?—Well, I am nearly certain. Three hours or so.

The Captain of the 'Circassian' was named what?—I do not know.

Do you know the name of anybody on board the 'Circassian'?—There are so many people of the same name.

We know that. But do you know the name of a single person who was on board the 'Circassian'?—Really, I cannot tell you that.

You had been a steward, according to your account?—I have, and intend to be so for the future.

Did you speak to the steward or anybody on board the 'Circassian'?—I spoke to a good many people, and there are a good many people on that ship who knew me.

You cannot tell me the name of any one?—I do not know the names.

The Lord Chief Justice: What made you take your place at Liverpool for Folkestone, if you wanted to get to Ostend?—I had no other way of doing it. I wanted to go the nearest way to Belgium. They told me I could book right down and go by the steamer to Belgium. They said to me if I wanted a through ticket I could have it.

What made you select Folkestone as a port of departure for Ostend?—By the advice of the people.

What people?—People at the railway station.

You told the people at the railway station you wanted to go to Ostend?—That I wanted to go to Belgium.

They advised you to go to Folkestone as the port in communication with Belgium?—Yes, and then I could go right through, and I could get a ticket.

WINTER AT KNOYLE.

Mr. Justice Mellor: What was the railway station?—You have to go up steps to go to that station in Liverpool.

Do you know the great square where St. George's Hall is?—I do not. I never was in England in my life.

Did you go by the London and North-Western, do you know?—I went with a tram-omnibus running alongside the docks, and I went with that to where they pointed out I could go to, to the railway station. Then I had to go up a mount of steps to come up to the railway station.

There is a railway station just opposite St. George's Hall?—I do not know St. George's Hall.

What other station was it?—I have never been in Liverpool in my life except now.

Was it daylight or not?—It was in the afternoon, about four o'clock, when I left the railway station.

In what month?—In the month of June; beginning of June.

Perfectly daylight?—Yes, perfectly daylight.

Was it near the docks?—Yes. When I left the tram I think it was about four or five minutes' walk from the tram up to that railway station.

You went up steps?—Yes, up steps; and it goes up-hill where I went into the railway station, turned to my right, and walked up a little up-hill and walked a few steps to go up.

Mr. Hawkins: Now, I reminded you that you had never mentioned your having been in England at all. You never mentioned that when you were previously cross-examined?—I did to you.

What?—I did to you. I told you I never was in England in my life.

You told me you never were in England in your life before you came from Ostend?—You take advantage of me.

Take advantage of you?—That seems so.

I read from page 183 (Vol. VI.), "The LORD CHIEF JUSTICE: Had you been staying in Ostend?—No; I had only been staying there about a fortnight in Ostend, and I had family business that brought me over there. To Ostend?—Yes, and to Antwerp. Mr. HAWKINS: Over from where?—From Lake Michigan. Lake Michigan to Ostend?—Yes. When did you arrive in Ostend?—I arrived in Ostend the first week in June."—That is correct.

You never broached one single syllable as to your having been in England?—My dear sir, how could I say anything about being in England? You cannot call that remaining in England, travelling from Liverpool to Folkestone.

Mr. Justice LUSH: He was not asked.

Mr. HAWKINS: Except in this way, it was not even suggested.

The LORD CHIEF JUSTICE: He might have overlooked that.

Mr. HAWKINS: You cannot mention to me a single person who you spoke to on your voyage?—I cannot.

Were you ever in Ireland?—Ah, but that is many years ago.

Many years ago you were there?—It was when the famine was.

I am asking you within the last year or two?—No, except when we called at Queenstown to take in a few men.

Now you have mentioned the name of a person named DAHL?—I know a man I think his name was DAHL; he lived in West Street, New York.

What is he?—If he is the same man?

What is the DAHL you are speaking of?—If he is the same man he is a kind of interpreter.

Interpreter?—I think so. I think he is the same man.

What is the man you mean? You speak of a man named DAHL you knew in New York. What is he?—He is an interpreter. No, I will tell you what he is. He used to be a runner for the emigration when they came over there.

What is a runner?—Those fellows that go on board and take interpretations of emigrants when they arrive in New York.

Do you know anybody named DORL?—That is the one I am talking of.

D-O-R-L?—No, I never knew such a name as that.

You are quite sure of that?—Yes, I am perfectly sure of that.

Positive of that?—Yes, I do not think I know anyone of the name of DRORL.

D-O-R-L?—No, I do not.

Never heard of such a name?—I might have heard of a good many names.

Do you remember any such name as that?—I do not. I heard last Friday respecting about his saying that KIMBERG was dead, that is six months ago.

I am asking about DORL?—I do not know the man, but that lady is alive.

I am not asking about that lady; I am asking about this gentleman.—That lady is my daughter.

The only person named DORL is the runner?—The man named DORL is a runner. When the emigration ships come over he interprets for them.

I only want to put this question to you further. Do you know a person named BAIGENT?—BAIGENT?

Yes.—I do now.

Have you been staying with him?—I have not.

Have you seen much of him?—I have seen him about two or three times since the Office was shut up, and I have seen him in the Office at Poet's Corner.

Have you seen him at the Reform Club?—I have not.

Do you mean to say you do not know the Reform Club?—I do.

Have you been there with BAIGENT?—I have not.

Have you been there with Mr. WHALLEY?—I have.

The LORD CHIEF JUSTICE: At the Reform Club?—I have.

Doing what?—To see Mr. WHALLEY. I think I have been there two or three times.

Mr. HAWKINS: Have you seen BAIGENT there?—I have not.

Further re-examined by Dr. KENEALY.

Did you see BAIGENT before you gave your evidence in this Court?—I did not know that gentleman's name until after I gave my evidence. In fact I have seen so many gentlemen in this place.

Did you ever have any conversation with BAIGENT about what evidence you were going to give?—Most decidedly not.

What time was it you left Liverpool?—It was about four o'clock in the afternoon.

And about what time did you get to the seaport?—What seaport?

The seaport you went over from Ostend from?—It was in the morning. We left there somewhere in the afternoon. I cannot recollect the hour.

Can you give us no idea how long the journey took?—About eight or nine hours.

The LORD CHIEF JUSTICE: From Liverpool to Folkestone?—No, from Folkestone to Ostend.

Dr. KENEALY: I am talking of from Liverpool to the seaport you started from?—It took us all the night up till ten or eleven o'clock in the morning.

Mr. Justice LUSH: That is what he said before.

Dr. KENEALY: Could you describe the port for which you took your departure for Ostend?—Liverpool.

The other port, where the steamer went to Ostend from?—There is a pier running down there when you go on board in a boat, and you land at Folkestone on a pier running down there from the Docks.

Could you describe this place you call Folkestone?—It is a small little place. When I came up the railway station I had to go a long way walking down, it is all down-hill, to come down to the little public-house on the left-hand side, where I went in and took my refreshment. Then I had to turn to my right and go down to the pier, that is where I went. I should think it took about a quarter of an hour from that railway station where I stopped.

From the railway station to the pier?—All down-hill among small streets.

Did you have any knowledge at all except walking from the railway station down to the pier?—I have no other knowledge of it except that man in the public-house; he and his daughter know the time I came there.

Can you give me any description of the place?—That little house?

This place that you call Folkestone. Could you give me any description of it?—No, I cannot, I can only give you the description; it is a crooked way to walk all down-hill from the station, and there was that little house on the left-hand side where I went in, and there was a gentleman sitting there who had been taking dinner with me at the time. I believe he was an independent man, as far as I could understand him. He took his meals at the same table with me.

Can you tell me how you know it was Folkestone?—I do know.

The LORD CHIEF JUSTICE: He says he took his ticket for that place.

Dr. KENEALY: Who told you to take a ticket to Folkestone?—The guard.

The fare you say was 23s.?—23s. and a few pence.

Were you ever there before or since?—Never in my life.

The LORD CHIEF JUSTICE (after consulting with the other Judges): We find ourselves placed in a condition of very great difficulty with regard to this Witness. I am extremely anxious not to do anything which could prejudice in the minds of the Jury the evidence which he has given. The evidence which he has given is of a very important character, and, if believed, although by no means conclusive of the Case, in my view of it, would yet be a matter to which the Jury, as one of the elements in this inquiry, would have to give the most attentive consideration. I am very anxious, therefore, not in any way to interfere with the unfettered exercise of their free and independent judgment upon it. On the other hand, the evidence has been met by contradictory evidence of an equally important character, and which, also, will have to be taken into account by the Jury. If the contradictory evidence should, in their opinion, be such as to discredit the Witness to belief at the hands of the Jury, and they should come to the conclusion that he has committed perjury in the evidence he has given, it is perjury of a most serious character, and deserving of serious punishment; and with this contradictory evidence to allow the Witness to be at large, without being put under recognizances, so that if the Jury should by-and-bye be of opinion that the evidence he has given has been perjured, and that he should then have the opportunity of escaping, is, I think, what we cannot allow. Therefore I feel we must put our power upon the Witness, and prevent him from leaving this country, if he should be minded to do it I hope the Jury will very distinctly understand that that is simply because there is such a contradiction between him and the Witnesses who have been called to contradict him, and we feel if, by-and-bye, they should be of opinion his evidence is not to be believed, he should not be allowed to escape from the consequences of so serious a violation of the law. Do not let it be believed that the Court takes this course because it entertains at the present moment, or is desirous of having it supposed that it entertains any opinion as to which side the truth is to be found upon; but simply if after they shall have exercised their full and free judgment upon this evidence they shall be of opinion that this man ought to be put on his Trial for perjury, he shall be forthcoming for that purpose. That being distinctly understood, I trust no injustice will be done, and no prejudice suffered by anybody by the course we feel called upon to take. We cannot allow this Witness to be at large under the sort of promise he has given to us. He must enter into recognisances, himself in £300, and two sureties of £150 each to be forthcoming, and be committed until he does.

The OFFICER OF THE COURT (to JEAN LUIE): You must be detained until you enter into those recognisances.

Dr. KENEALY: Will your lordships give me a postponement to enable me to call Witnesses?

The LORD CHIEF JUSTICE: What Witnesses?

Dr. KENEALY: I want to have an inquiry——

The LORD CHIEF JUSTICE: Witnesses where? Where do you propose to find those Witnesses?

Dr. KENEALY: If I can show that that man left America at the time he states——

The LORD CHIEF JUSTICE: If you have such Witnesses I shall be ready to hear them.

Dr. KENEALY: I do not know anything about it.

The LORD CHIEF JUSTICE: Neither do we.

Dr. KENEALY: I ask your lordships to give me an opportunity

of seeing whether I cannot bring Witnesses from America who will conclusively establish the truth of this man's story. They will have to be brought some time.

The LORD CHIEF JUSTICE: That is only a speculation. Suppose at the end of the time you tell us you have no such Witnesses, we shall have lost three weeks.

Mr. Justice LUSH: It does not go to the point in issue.

Dr. KENEALY: If your lordship had permitted me to read the affidavit——

The LORD CHIEF JUSTICE: Of whom?

Dr. KENEALY: Of JEAN LUIE,—I would then have been able to show you whether I had Witnesses or not. In that affidavit he states he could bring Witnesses to show——

Mr. Justice LUSH: It does not go to the point in issue between the Crown and the Defendant. It only goes to a question whether he was at Lake Michigan in March or April. It is beside the issue in the cause.

Dr. KENEALY: If I can produce Witnesses——

The LORD CHIEF JUSTICE: If you had such Witnesses;—but you are asking us to adjourn. We must give you a fortnight or three weeks; and you are asking us to adjourn,—not because you have Witnesses, but on the speculative possibility of being able to find them.

Dr. KENEALY: It was exactly on that ground Mr. HAWKINS got the adjournment from your lordship. He had no affidavit and made no statement.

The LORD CHIEF JUSTICE: I beg your pardon. He had the Captain of the vessel to which you in your speech had referred.

Dr. KENEALY: I hope your lordship will not keep harping on that subject of my speech, and New Bedford, because I told your lordship before that I was imperfectly instructed in the matter.

The LORD CHIEF JUSTICE: Mr. HAWKINS was entitled, when he heard you say in answer to a question from me, and heard you give a specific answer it was the New Bedford 'Osprey' to which LUIE was to speak, or the Witnesses you had were to speak;—Mr. HAWKINS then sent to America. There was the Captain; and he got the log in order to show his vessel never went to Australia. He had a good foundation for the application to postpone the Case in order that he might, by searches at the different places where the records were kept, confirm and corroborate the evidence he was in a condition to prove. It was not at all a speculative thing like this.

Dr. KENEALY: There was nothing in that statement by Mr. HAWKINS supported by anything from an affidavit. I hope I am entitled to equal indulgence from the Court, when I say I have reason to believe I can bring Witnesses from Lake Erie, who will show that that man's statement is true; that he was there in the months he has sworn to, and, secondly, that he was not in England. In addition to that I have reason to believe that I shall be able to get Witnesses in London who will satisfy the Jury that this man did come to London for the first time at the time he mentions.

The LORD CHIEF JUSTICE: How can any Witness who says he first saw him in June, negative the fact he was here in March and April?

Dr. KENEALY: He may be able to get people from the 'Sunbeam' to show he was not the man said to have been there at that time. It is presented to your lordship and the Court and Jury that somebody at the 'Sunbeam' said he slept there one or two nights. If persons at the 'Sunbeam' come and look at this man and say he is not the person who slept there one or two nights——

The LORD CHIEF JUSTICE: That is what I was anxious to know, whether the woman who kept the coffee-house could speak to the identity or non-identity. Unfortunately, that woman is lying dangerously ill, and the doctor will not allow her to be spoken to.

Dr. KENEALY: Some persons may be able——

The LORD CHIEF JUSTICE: Between this and to-morrow morning if you can find such persons you can renew the application.

Dr. KENEALY: I hope I shall be allowed to get a Witness from America.

The LORD CHIEF JUSTICE: We cannot adjourn for three weeks. We do not know there are such Witnesses; we do not know the Witnesses would come, and it would require three weeks to get them here if they would.

Dr. KENEALY: Still, in a case of this importance, as your lordship is laying down a precedent for all future Criminal Trials, I hope, granting an indulgence to one side, you would not refuse a similar indulgence to another side.

The LORD CHIEF JUSTICE: That is a very different question indeed: when you are talking of indulgence, it is not indulgence, it is a matter for the exercise of the discretion of the Court. In that case it depended on whether or not a certain vessel had gone at a given time to a given place, and had picked up a boat. It went to the very root of the Case. This is only a very collateral matter indeed; one of the incidents that go to the credit of the Witness, but not a fact that goes to the real merits of the Case.

Dr. KENEALY: If the Witness's credit is substantiated and supported by the evidence I can get from America, surely it would considerably strengthen the other.

The LORD CHIEF JUSTICE: If you had the other Witnesses here, I should be ready to go on, but I do not see any reason to adjourn.

Dr. KENEALY: If your lordships allow me until the morning with regard to my application as to Witnesses from the 'Sunbeam,' does your lordship preclude me from making an affidavit in the morning as to the Witnesses from America?

The LORD CHIEF JUSTICE: I cannot say that.

Mr. Justice MELLOR: On the former occasion there was an affidavit, and we acted on what we heard in our own presence, and on what had taken place before us, which in itself afforded the strongest foundation for Mr. HAWKINS's application. It was not on a mere affidavit that the question of adjournment was discussed: we clearly were influenced by what appeared before us; he was entitled to give evidence in reply. We did not give him any indulgence in that. He was entitled to give the evidence in reply, and gave it, and we could not stop him. The question of adjournment arose from what we heard mainly in our own hearing and presence. I, for one, cannot myself see any ground for the application at all.

Mr. Justice LUSH: Nor do I.

Dr. KENEALY: The adjournment, your lordships granted, will be a precedent in all future times for Murder Cases involving life and death. I am sure you would be sorry to lay down a hard and fast line that "We will allow the Prosecutors to have time to bring up their Witnesses, but we will not allow the Prisoner time."

The LORD CHIEF JUSTICE: We do not lay down any hard and fast line; but we must exercise our discretion with reference to the particular circumstances of each individual case. As I have already said, where it was a matter of so much importance to ascertain whether this vessel called the 'Osprey' had picked up this boat's crew in the latitude and longitude where it is stated to have occurred, it is a matter of vital importance in the Case, and it was essential there should be an opportunity of bringing Witnesses. Here we are asked for three weeks' delay, in order that some one may be found on board this vessel on Lake Michigan to say this Witness was on that vessel in the months of March and April; and he states he was not here till June. The Witnesses say he was here in March and April; they have been heard, and he has been heard. If any Witness was present who could confirm him, you would be entitled to confirm him.

Dr. KENEALY: Your lordships would not have allowed me to produce a Witness in the course of my own Case to say that he saw him on Lake Michigan.

Mr. Justice MELLOR: I have great doubts whether it would be admissible if you could prove it.

Dr. KENEALY: Not then, but now.

Mr. Justice MELLOR: All you can do is to corroborate the statement made by the Witness on that subject. He has been examined, and the only contradiction—a most material one, I agree—is that at the time he professes to have been on Lake Michigan, or elsewhere, he was under the name of SORENSEN, in London. Four or five Witnesses have been called to prove that he was under the name of SORENSEN attempting to negotiate a charter-party and to get money for the purpose of buying a chronometer. They are here, and I quite agree if you were taken by surprise by the evidence of those Witnesses, and thought they were persons whose characters would not stand investigation, we have said if you had any such ground as that, and will renew your application to have them recalled and cross-examined by you, we should be disposed to listen to it; on no other ground.

Dr. KENEALY: I ask your lordships to adjourn the Case until Thursday to enable me to make inquiries about these persons.

The LORD CHIEF JUSTICE: Make inquiries between this and to-morrow.

Dr. KENEALY: Can I do so?

The LORD CHIEF JUSTICE: It is this coffee-house.

Dr. KENEALY: You do not make allowance for the magnitude of this Case and the labour.

The LORD CHIEF JUSTICE: It is not a question of the magnitude of the Case; it is a question of the magnitude of this collateral issue. The question is whether or not this is the identical man who was at the office of those gentlemen in the Minories, in March and April. You say besides these Witnesses there was a person at the coffee-house, or there may have been persons, who will be able to say whether he is the man who lodged there or not. You can find the coffee-house. They will tell you where the coffee-house is.

Dr. KENEALY: London is a large place, and between this and to-morrow morning it will be difficult for us to make anything like efficient inquiries. I do not want to put off this Case or adjourn it. I am ready to go on at this moment. I am not asking it for my own convenience. I thought I should begin to-day and I am ready to do so; but it does seem rather hard to impose on us the absolute necessity of calling Witnesses in contradiction of those sprung on us in the way they have. I have heard no reason given at all why the names were not furnished to us on Saturday last. There are some of them they got on Friday.

The LORD CHIEF JUSTICE: Suppose they had, how would you be better off?

Dr. KENEALY: We should have had the whole of to-day.

The LORD CHIEF JUSTICE: Do you want to inquire whether they are respectable Witnesses or not?

Dr. KENEALY: I do not want it put in that way, because it is rather hard to be called on to make a charge or insinuation against people of whom I know nothing. I do not wish to do so,

but we ought to have time to make some inquiries as to this Sorensen. We may be able to discover—I do not know how that is—that there was such a man, and that he is an entirely different person.

The Lord Chief Justice: How do you propose to discover that? Your Witness says, I never knew a Sorensen, I do not know the name. How are you to discover Captain Sorensen?

Dr. Kenealy: The newspapers will carry all over London this name of Sorensen, and no doubt the following morning we shall be flooded with communications if there was or not. If there was we shall have no difficulty I apprehend, on the post coming in on Wednesday, of tracing his identity; but for us to go to work and grope in the dark in search of Sorensen would be the greatest folly that could be conceived. A great deal of information that has been given to us on behalf of the Defendant in this Trial has come in consequence of evidence that appeared in the newspapers, and never would have come but for that evidence. I have a confident hope that Wednesday's post will bring us information with reference to this man.

The Lord Chief Justice: You propose to us to adjourn this Case on what I call the speculative possibility of the post of Wednesday bringing you information about this Captain Sorensen. Is that the suggestion?

Dr. Kenealy: I hope your lordship will not call it speculative if there was such a person as Sorensen as distinct from Luie, or if there was no such person.

The Lord Chief Justice: The issue of this Case has been pending for several years, yet we never heard of Luie until the other day.

Dr. Kenealy: That is quite correct.

The Lord Chief Justice: So it may be if this Case was to go on for an indefinite period, or for another series of years, we might find some new Witness who would come up and tell you who Sorensen was. All I mean is we cannot go into a speculation like that.

Dr. Kenealy: I am only asking till Thursday to make inquiries. It is a matter of the most vital consequence not only to the cause I represent, but also——

(Their lordships consulted.)

The Lord Chief Justice (addressing Mr. Whalley): There is no occasion to keep him or delay you, if you are prepared to be one of the recognizances.

Mr. Whalley: If your lordships please.

(Their lordships further consulted.)

The Lord Chief Justice: I want to meet you, Dr. Kenealy, if I can, to see we do justice, but I do not know we should be justified in putting off the Case and adjourning it to a future day on the chance of your finding Captain Sorensen; but, letting the Case go on, if you do find that a Captain Sorensen, in whom you have any confidence, does come forward, we will allow you at any time in the course of your address to the Jury to interrupt the ordinary course of proceeding, and upon special application to us you shall produce Captain Sorensen, and the Witnesses shall be called back to say whether they have made a mistake as to his identity.

Dr. Kenealy: I do not pledge myself to produce Captain Sorensen.

The Lord Chief Justice: Just observe. You ask us to adjourn to Thursday, because you say it is possible that communications may be made to you on the subject of Captain Sorensen, and you may be able to trace him. I say we cannot adjourn to Thursday, because we do not think it expedient to adjourn; it takes time and blocks up this Court for all other business. We cannot grant what you ask, that is another adjournment; and we call on you to go on with your address to the Jury; but if you find you receive communications respecting Captain Sorensen, and he is forthcoming, and there is any apparent mistake as to identity on the part of the Witnesses, you shall have the Witnesses back again.

Dr. Kenealy: Your lordship is saddling me with a hard thing. You say, if he is forthcoming, and if I get authentic information.

The Lord Chief Justice: I think it would be eminently unsatisfactory unless you got Captain Sorensen himself; still, whatever case you have got with regard to that question—whether he was Sorensen or whether he was not—we shall not consider you are precluded from making any special application to us by the fact that we, at present, consider the evidence closed, and call on you to go on with your address. You may at any time, even while you are addressing the Jury in summing-up, interrupt the course of proceeding, and ask us to take evidence on that matter.

Dr. Kenealy: And cross-examine the Witnesses called to-day?

Mr. Justice Mellor: Certainly, to confront him. You ought to have the opportunity of confronting those Witnesses with this person.

Dr. Kenealy: I must protest against being bound to produce Captain Sorensen. If he be the person he is described he is not likely to present himself. (Laughter.)

The Lord Chief Justice: Your application was based on this: that you might hear of Captain Sorensen and produce him.

Dr. Kenealy: But as to pledging myself to produce him, if he be the person described by these Witnesses, he is not likely to be anxious to attend before your lordships.

The Lord Chief Justice: All I can say with regard to the question of proof of identity you may make any application to us, although we consider for the present the evidence is closed.

Dr. Kenealy: And cross-examine these Witnesses, if necessary?

The Lord Chief Justice: If we find there is any ground for supposing there is any mistake.

Mr. Hawkins: Would your lordships permit me to hand up an affidavit?

The Lord Chief Justice: If you think it necessary.

Mr. Hawkins: I wish your lordships to dispose of that application because I do not like Mr. Pollard to remain under any imputation.

Mr. Justice Lush: We are prepared to do that.

Dr. Kenealy: I say that even supposing Mr. Pollard had all the while the information which is given here to-day—I do not ask to see the affidavit—I assume he had the whole of the information on Friday given before your lordships on oath to-day; nevertheless that does not justify or excuse, or even palliate, the conduct of which he was guilty in open Court; because it was not the time or place for Mr. Pollard to make the scene which he did make, which the whole of the Jury saw, which your lordships, when you were hurriedly summoned back to the Court, could not fail to see the elements of prevail in every eye—curiosity, excitement, expectation of something terrible going to occur.

The Lord Chief Justice: You say we cannot fail to have seen it. I did not see it.

Dr. Kenealy: Men are only men, and are not infallible, as Judges are supposed to be, and the crowd could not fail to consider this was some extraordinary operation. If your lordships saw the newspapers you would not fail to have read the paragraphs or heard of the paragraphs suggested by that extraordinary scene. I do not call your lordships' attention to any of those things, because probably, in perfect strictness, Mr. Pollard may not be liable for those paragraphs. I say he selected a most unfortunate time and occasion, and he conducted it in a most unfortunate and violent manner, in bringing forward these men in the way he did—threatening him, as it were, compelling him to remain in Court, although he required no compulsion to do so, because he was willing, and has been, to abide by the promise he made to your lordships. Going about exciting observation in the way he did—I say that was calculated in an extreme degree—I will not use the words your lordship cavilled at—I say it was calculated to excite an unfair prejudice in the minds of the Jury that something had cropped up with reference to Luie and with reference to his evidence.

The Lord Chief Justice: What does your affidavit say, Mr. Hawkins, about what Mr. Pollard did?

Mr. Hawkins: Will your lordships let the affidavit be read?

(The affidavit was handed to the Court.)

The Lord Chief Justice: This had better be read.

Master Cockburn:

"In the Queen's Bench.

"The QUEEN against THOMAS CASTRO, otherwise called ARTHUR ORTON, otherwise called SIR ROGER CHARLES DOUGHTY TICHBORNE, Baronet.

"I William Henry Pollard, of the Solicitors' Department of Her Majesty's Treasury, make oath and say—

"1. That on Friday last, the 28th day of November, 1873, at about a ¼ past three in the afternoon and just before this Honourable Court rose, the letter hereunto annexed marked 'A' was handed to me by Mr. Stephenson.

"2. I directly went to the passage door, on reading the contents of the letter, but not being able to get through the crowd, I asked the usher to go out and send in the two gentlemen who had brought this letter, holding it up.

"3. At this moment the two Witnesses Peter Van Schaik and John Stettaford, who have been examined in this Court this morning, came in, and as they did so the Court was adjourned by proclamation before I could speak to them.

"4. I looked round and saw that the Judges had left the Court, and I then turned to John Stettaford, who by that time had got forward and was standing in front of Jean Luie, and I said to Stettaford, 'Do you know this man?' He replied, 'Yes.' I then asked Van Schaik the same question, and he also said he knew Luie.

"5. Immediately upon these two persons stating that they knew Luie, Luie got up from his seat to go away. I then put my hand on his arm and told him not to go or I should have him detained until the Judges either returned into Court or gave directions what was to be done. Upon this Luie sat down again in Court.

"6. I never saw either Van Schaik or Stettaford before they appeared in Court as above stated by me, nor did I hear of their existence before their arrival in this Court with the said letter hereto annexed.

"W. H. POLLARD.

"Sworn at Westminster Hall, in the County of Middlesex, this first day of December, 1873,

"Before me,

"W. J. Cleave,

"A Commissioner, &c."

(The following is the letter referred to in the above affidavit.)

"(A)

"6, Bedford Row, London, W.C., 28th November, 1873.

"DEAR FRED,—The two gentlemen who will give you this note want to see LUIE, as they have reason to believe he is the person who passed as Captain SORRENSEN of the ship 'Girda,' and who swindled them. You had better let them see him forthwith if he be in Court,—Yours affy.,

'F. BOWKER, Esq." "J. BOWKER.

Dr. KENEALY: What explanation of Mr. POLLARD'S conduct is presented in that affidavit? Mr. POLLARD might have brought his Witnesses in, or told them to remain outside in the precincts of the Court until everybody was leaving; being a man of remarkable appearance, the Witnesses might have remained in the passage and identified him. I say the mode and manner of the identification is what I complain of as calculated to injure the man, and calculated to hinder the cause of the man for whom he was called as a Witness. If Mr. POLLARD had identified him, or if any violence had occurred in the precincts of the Court, or outside, and not in the observation of the Jury, I would not complain. It might be excused by the excess of his zeal; but what I complain of is that a man in the responsible position of Assistant-Solicitor to the Treasury would not wait two or three minutes until everybody had left the Court, or the Jury removed from the opportunity of observing what he was about to do, and the general public forming an unfavourable impression of the Case from a scene of that description. If your lordship thinks it is right and proper I shall say no more; I put before the Court that that was not the time to do it. Supposing every word of Mr. POLLARD'S Witnesses is to be taken as implicit gospel, justice could in no way have been injured by his waiting five minutes until everybody left the Court; and it was calculated to excite in the minds of the Jury, and all other persons connected with the Case, a most unfavourable impression with reference to a Witness who gave important evidence. I put the matter before your lordships, and you will deal with it as it deserves.

The LORD CHIEF JUSTICE: There is not the slightest pretext for saying there has been any Contempt of Court in the matter. Mr. POLLARD felt himself placed in a position of difficulty on a sudden, and he acted on the sudden spur of the moment. I quite agree, if he had time for deliberation, and the Court had not been breaking up, it would have been better if the thing had been done in a more quiet manner. The Court was breaking up; there were two Witnesses who came to say they could identify this Witness with reference to a very important matter, namely, his presence in a given place at a given period; and Mr. POLLARD, seeing, as he says, he was about to leave the Court, put his hand on him and said, "Do not go; I must insist on your being detained; I want to call the Judges back, in order they may take action in this peculiar phase of the inquiry." That is really what passes, but not in that exact sequence of ideas; it is a pity he put his hand on the man's shoulder, or that the thing was not done in a more quiet manner, and less open to observation; but we must consider the circumstances in which he was placed, and judge of what he intended to do; and I cannot, for a single moment, suppose that Mr. POLLARD intended to do anything he thought wrong. As to calling him to account in the way of penalties for Contempt of Court, I can only express my regret that any such application was made.

Mr. Justice LUSH: I only wish to add one word. I have far too high a respect for the judgment and intellect of the Jury, to think that they would be influenced in the least degree by the incident in question.

[JEAN LUIE, who had been taken into custody by the Tipstaff of the Court (Mr. FRAYLING), was liberated on Mr. WHALLEY entering into his recognisances to produce him to-morrow morning, and LUIE himself into his recognisances for a similar amount to appear.]

[Adjourned till to-morrow morning at 10 o'clock.]

AFTER THE ADJOURNMENT ON THE 130TH DAY.

There was a much larger crowd in Westminster Hall, Palace Yard, and the streets outside it yesterday than on Thursday, the first day of the resumed proceedings. The Hall was crowded towards the entrance by the Queen's Bench barriers, and along the eastern wall so early as two o'clock, as it is well known that Friday is an early day—that the Court rises generally about three o'clock; in fact, it is uncertain at what hour the proceedings of the day may close, so tired after the week's work are Judges, Jury, and Counsel. Palace Yard began to fill at half-past two, and from that hour up to the time of the Claimant's departure people were constantly flowing in. A large proportion of the spectators was composed of ladies fashionably attired. The footpaths of the streets outside Palace Yard presented a remarkable contrast in appearance to what they did on Thursday. Yesterday, with the exception of the footway close to the railings, all from which a sight of the Claimant's brougham could be had were literally covered with people. In the yard were, as on former occasions, some vehicles drawn up behind the crowd, which extended from the western gate to the open corridors, and from these, whether waggonettes or open carriages, ladies and gentlemen looked over the heads of the crowd, and when the proper time arrived, hats and handkerchiefs were waved by the occupants of the vehicles. The police arrangements were pretty much the same as on Thursday, except that an extra body of men was required to keep the passages through the crowds well open. On the whole, the duties of the police were satisfactorily, quietly, and unostentatiously performed. In the aggregate there were probably 120 men on duty about the Palace of Westminster yesterday, and they had, of course, their due quota of inspectors and sergeants, the former amounting to some seven in number. There was a very large sprinkling of Detectives amongst the respective crowds. No doubt the precaution was an advisable one, but as far as could be ascertained no loss of property was reported at the police-station. Half-past three o'clock struck, and there were not any signs of approaching adjournment; but a few minutes afterwards some of the privileged who had been in Court during the day were seen coming out of the Hall, and then the ranks of the crowd were "closed up," necks were strained, and at twenty minutes to four there was a general cry of "Here he comes." So he did come, looking as jolly and happy as if it were but the first day of his Trial. Indeed the Claimant's genial smile gave rise to the supposition that some episode had occurred within of a bright and pleasant nature. As he emerged from the Hall there was a loud and hearty cheer sent up, and simultaneously as many lawn handkerchiefs as a respectable laundry could display kept time by their fluttering to the hand-clapping of the gentlemen. The Claimant acknowledged as often as his short walk to the carriage would permit the greetings with which he was received, and then drove off amid repeated and prolonged applause. Then came the ludicrous act in each day's performance—that in which her Majesty's liege subjects are imprisoned, like caged animals, within the iron bars which surround Palace Yard, for the space of four minutes—for, with a leniency which has no doubt been already appreciated by the public, the authorities have respited six minutes of the term of imprisonment TICHBORNE sympathisers were wont to suffer. When the gates were opened, a very large, a very good-humoured, and very respectable crowd came out into the street; and the C's, who, as stated in yesterday's 'Advertiser,' now do the street duties instead of the CR's, allowed the people, who were remarkably quiet and orderly, to——be so. A noble Lord, who sits on the front Opposition Bench in the House of Commons, Lord JOHN MANNERS, passed through the crowd, and eyed it curiously. Mr. GUILDFORD ONSLOW, M.P., who was strolling on the footway near the enclosed little garden close to St. Margaret's Church, looked with evident interest at the thousands who were coming out of Palace Yard. But of course noble lords or the relatives of noble lords were as nothing to the crowd, with whom "KENEALY" was the cry. The police, by a sensible move of, we think, Superintendent MOTT, were drawn off, and then it was a pleasure to see Mr. Justice LUSH making his way through the crowd, as he steered towards Parliament Street at a little before four o'clock. Nor was it a less agreeable sight to witness the departure of Mr. HAWKINS, Q.C., unattended by "Treasury" or any other species of Detective, at five minutes to four o'clock. Still Dr. KENEALY did not make his appearance, and a crowd of some two or three hundred persons remained outside the Judges' private entrance until a quarter to five o'clock, momentarily expecting the learned Doctor to come out. At the corner of Bridge Street a similar crowd remained, but was disappointed as the other was. Dr. KENEALY, no doubt, went to Chambers by the Victoria Embankment.—'The Morning Advertiser,' November 29th, 1873.

THE UNFAIRNESS OF THE PRESS DURING THE TRIAL.

The 'Morning Advertiser,' commenting on the above, says:—That some journals have not behaved fairly towards the Claimant in the TICHBORNE Case, in either their reports or their remarks, is a thing which by this time must be pretty well known to the British Public. The cause of this we do not attempt to explain. It is contrary to the traditions of a free Press to run down any man on his Trial, especially when, whatever the merits or demerits of his cause, he happens to represent poverty contending with enormous means. In the days of JUNIUS, and, still later, when the trenchant touches of FONBLANQUE in the 'Examiner'

told, as few journalistic writings tell now, this would not have been. It is a pity that it should be. True, it may not, and probably does not, influence the conduct of the Case in Court, and will not have the slightest effect upon the verdict one way or the other. That it does influence the public mind is certain, and it may be said to exercise a disturbing and most unsatisfactory influence. It is the habit of certain writers to groan over the length of the Trial, to turn up the whites of their eyes in holy indignation, to display all the airs of boredom, and to contrive to make all this personal to the Claimant. Here, for instance, we have the 'Daily News':—"We breathe again," says that journal. "When we say that the Defendant's Case has been concluded, no mistake can be made." We then learn how our contemporary pants for a "unanimous verdict." We are left in little doubt by its remarks, recent and late, what the 'Daily News' would wish that verdict to be, although it says that "any verdict would be better than none, in the interests of peace and quietness." The writer of this is probably one of those men who periodically go into real or simulated fits of agony, because their fine susceptibilities have been excruciated by a street-organ. "A street-organ killed poor dear LEECH, you know," such a one would say, as if an organ had literally robbed him of his dearest friend. Well, but this TICHBORNE Trial—cannot a good word be said for it both by the Public and the Press, and especially by the latter, whose gain is not contingent? It is not improbable that this very Case, which has deeply interested far more than it has really wearied the public, may lead to the reform of the whole system and conduct of our Criminal Trials; to the revision of the law of evidence; and, in short, to changes of such vast importance that we may yet live to regard that as a blessing which it is now the fashion to revile as a curse. As for the Press, we cannot see why the newspapers should quarrel with their bread-and-butter. The conduct of one or two newspapers reminds us of the contempt we have heard expressed by a City merchant's wife for his business, although that very business afforded her all the luxuries which surrounded her. May we ask our contemporary the 'Daily News' how it is that London has been placarded and posted with its name in conjunction with the hated word "TICHBORNE" in large letters, informing the world in smaller type that the best account of the Trial was to be read in its columns, &c.? At a distance one saw nothing but "TICHBORNE, 'Daily News,'" or "'Daily News,' TICHBORNE." Is this sort of thing consistent with "We breathe again"? Or is it a little, ever so little, inconsistent to parade these grand airs of boredom and disgust, and yet to make this particular use of the TICHBORNE Trial?

DR. KENEALY'S SUMMING-UP FOR THE DEFENCE.

THE Summing-up for the Defence now begins. We fear it will not be so full, or accurate, as the opening speech, which purported to be, and in some sort was, the Shorthand Writers' Verbatim Report of what the Doctor said. We say "purported," because it was not strictly so. There were mistakes, excisions, misrepresentations, garblings, and suppressions of what actually took place; but on the whole it was accurate enough. The reader knows that no printed copy of the Summing-up was given to the Doctor. They know also that the Public paid for the Shorthand Writers' notes of the whole proceedings at the TICHBORNE Trial; but Dr. KENEALY, in his Opening Speech for Sir ROGER, hit the Prosecution and the Family so hard, that Mr. LOWE, on the part of the Treasury, gave orders, as was said, that his Summing-up should not be printed, as his Opening Speech had been. This speech, therefore, was supposed to be in manuscript; but copies of it were made every day for the use of the Judges, and the Counsel, and Lawyers engaged in the Prosecution, while none, of course, were given to the Defendant. Dr. KENEALY, as he had no report but only his notes, asked Mr. CROSS *to lend him a copy*, promising to return it to the Treasury when done with, and adding that this would save him at least three or four months' hard work, which he must otherwise have to undergo in preparing the Speech for press. He expected no refusal; for his Verbatim Report is in the nature of an historical document; and all public writers have ever had the free use of public documents in public offices, when they are intended for the public use; the more especially as these documents belong to official departments, or are paid for by the public purse. But in the TICHBORNE Case, as from the first, there is a departure from all precedent—and a despisal of all decency. Dr. KENEALY, to his amazement, received the following curt and almost uncivil answer:—

[4,877.] Whitehall, 11th March, 1878.

SIR,—I am directed to acquaint you in reply to your letter of the 22nd ult., asking for a transcript of Shorthand Writers' notes of your Summing-up for the Defence in REG. *v.* CASTRO, that the Secretary of State must decline to accede to your request.—I am, sir, your obedient servant,

A. F. O. LIDDELL.

Dr. KENEALY then addressed the following letter to the Home Secretary:—

DR. KENEALY TO MR. CROSS.

Lancing, Sussex, March 16, 1878.

SIR,—I can hardly think it possible that the short and impertinent letter which I have just received from Mr. A. LIDDELL could have been seen or sanctioned by you.

This gentleman makes it a rule to insult every one who writes to you upon the TICHBORNE Case.

Such conduct in a public servant is very censurable; and it does harm to the public service generally, as it makes those who are insolently treated hate the department by which they are wantonly affronted.

There was nothing in my application to you which could in the least degree warrant this man's ungentlemanlike reply. There was certainly nothing in your manner to myself, when I spoke to you on the subject, that could lead me to think that when I complied with your own request, to write to you, I should be subject to the impertinence of Mr. LIDDELL.

Allow me to ask you on what ground you refuse my request? I have asked for the loan of a public document, paid for out of the public money, of which document I know that a great many copies exist. The Prosecution had them during the TICHBORNE Trial; but the Crown, which ought in all Trials to stand indifferent between the parties, would not give us one then, and now that all is over will not even lend me one for the Verbatim Report of the Trial, which I edit.

I told you that the loan of it would save me several months' hard labour. How can you refuse to save me that labour by so trifling a favour as the loan of a manuscript made at the public expense, and of which many copies are lying useless upon a dusty shelf? It cannot be to gratify a feeling of spite—for I have not seen evidence of any such sentiment in you.

The report of the TICHBORNE Trial is in the nature of a History of the greatest Trial that ever the world saw. The Treasury has a (supposed) authentic copy of my Speech delivered during that memorable event; and it refuses even to lend it to me for the purposes of publication.

I submit that such a refusal has no example. When I applied for a copy of my Speech during the Chartist Trials in 1848, in which I censured the Whig Government of the time quite as strongly as I felt it my duty to censure the Prosecution in the TICHBORNE Case, Sir GEORGE GREY at once consented to my having a copy for publication—though I did not avail myself of his offer, for reasons into which I need not enter.

I must therefore respectfully repeat my request, or at all events I must ask for some reason why it should be denied me, as the Reporter of this great Trial, and as being therefore in some sort the Historian of an event almost national in its importance.

Nobody in his senses could question my right, as one of the public who paid for it, to go every day to the Treasury and make a copy of what I said. And because I courteously ask you to save me this trouble, I receive a letter whose language is in truth an affront: a letter that will cause anger and disaffection among myriads of persons quite as respectable as Mr. LIDDELL, and probably with much better taste and better feeling.

Your attention has been before called to his langnage. I fear you have not rebuked him as he merits, or he would hardly repeat his epistolary style. One does not expect the elegance of CHESTERFIELD from such a person; but one does look for at least common civility in a man who gets £2,000 a year for only signing his name to worthless bits of paper; and who, if he were not the son of a lord, might deem himself happy in the post of a village policeman, for which I think he is best fitted.—I have the honour to be, Sir, your obedient Servant,

Right Hon. R. A. CROSS, M.P. E. V. KENEALY.

DR. KENEALY TO MR. CROSS.

House of Commons, March 21, 1878.

SIR,—I thought I should have had the pleasure of an answer from you to my letter of the 16th.

My first application was made on the 22nd of February. Between then and the date of Mr. LIDDELL's reply, I presume you had considered why you were resolved to "decline" a request founded as I think, on right, and good reason. You do not, therefore, I suppose, require another three weeks before you communicate to me the cause of your refusal. I own I am anxious to know what it is, as I believe it to be wholly without precedent, or even excuse; and I think it cannot be from any personal feeling against myself, as I have given you no grounds for such, but have always treated you with politeness, and was in no manner prepared for your Under-Secretary's impertinence.—I have the honour to be, Sir, your obedient servant,

Right Hon. R. A. CROSS, M.P. E. V. KENEALY.

MR. CROSS TO DR. KENEALY.

(4877) Whitehall, 23rd March, 1878.

SIR,—I am directed by Mr. Secretary CROSS to acknowledge the receipt of your letter on the 21st instant, and I am to acquaint you in reply that Mr. CROSS repeats that he is unable to comply with your request to be furnished with a copy of the shorthand-writer's notes of your Speech on the TICHBORNE Case. Mr. CROSS finds on enquiring that it is not the ordinary practice of the Treasury to allow notes so taken to be given subsequently for publication; and he believes the Department is only acting in this instance as it does in others of a similar nature.—I am, Sir, your obedient servant, H. SELWIN-IBBETSON.

DR. KENEALY TO MR. CROSS.

London, April 11, 1878.

SIR,—It appears to me that you are in the hands of persons who do not care what false information they give you, provided it serves a momentary purpose. Witness the noted case of MINA JURY, when they induced you by their representations to mislead the House of Commons by the untruths which they supplied—a very grave act in a Minister of State.

Nothing has ever covered Mr. BRUCE (now Lord ABERDARE) with so much disgrace as the false information which, as Home Secretary, he conveyed to the House in the Case of O'DONOVAN ROSSA. Interrogated whether that unfortunate gentleman had not been compelled, when in Mountjoy Prison, to eat his food like a wild beast, his hands being tied behind his back, Mr. BRUCE indignantly denied it, and glanced as triumphantly upon the inquirer as you did upon me when I asked you about MINA. Yet, upon a Royal Commission of Enquiry, *it was all proved to be true*, just as your denials about MINA have turned out to be untrue. Yet I hope to see unravelled in the House of Commons whether it may not be the same person at the Home Office, who lied to Mr. BRUCE, that has told a similar lie to you. And to this discovery I invite your assistance, because as a man of honour you cannot sympathize with the falsehoods of your informant, and I think you should help me to unkennel him.

The present is another melancholy instance of what is done in "official circles." I asked you to lend me a manuscript copy of my Summing-up in the TICHBORNE Case, for the purpose of publication in the Verbatim Report of that Trial which I edit; and they have told you that it is not the practice, &c. &c., as if, whether it was the "practice" or not, there were any crime in doing it on this special occasion; and as if any Minister of the Crown ought not to be glad to save me the (at least) four months' intense mental application and labour, which it will impose on me, to reduce that Summing-up into order for publication from the scattered notes which I possess. For I need not tell you that the Newspaper reports cannot suffice; for they are garbled, one-sided, untrue, malicious, and unreliable in the extreme. I have asked for this loan, because the Copy *is paid for out of the public purse;* and because it *never* has been the "practice" to refuse persons who are editing works of an historical nature the use of documents of this sort which are lying idle in your boxes. It was bad enough to refuse me a copy during the TICHBORNE Trial, but it is made worse by refusing it to me now, when I ask it for historical purposes. I make bold to say that the Treasury cannot furnish you with a single instance where a request like mine has been made, and a refusal like the present has been given. And I have a further favour to ask you, which is, to let me know from whom you have received this information, which the fact that follows proves to be false.

I have now lying before me the printed "*Charge of the Lord Chief Justice of England; reprinted from the Official Copy, taken from the Shorthand-Writers' Notes.*"

From this it appears that the Treasury actually *printed* copies of the Proceedings, though they announced openly to the world that they had not; and that among these they printed a copy of the Chief Justice's Summing-up—a fact which I never knew till now, and which none of the public could ever have known (after the declarations to the contrary made in Court during the Trial), were it not for this oversight on the Chief Justice's title-page. I presume, therefore, that the Treasury contains also printed Copies of my Summing-up, and I must again urge upon you that I ought to have one.

Had I known during that accursed Trial that they were really printing the proceedings, though they denied that they were, I would have demanded a copy day by day, heedless of their denial day by day. But it now appears that I was deceived, and that the whole country was deluded as well. And it would seem that the falsehoods resorted to by the Crown during that investigation will never probably all be known, when a flagrant one like this only now turns up, as it were, by mere accident.

I must again, therefore, respectfully ask you to order either a printed copy to be given to me for the purposes of the Report, or that you will lend me a printed or a manuscript copy for that purpose, which I shall return when done with.

I am as well entitled to this as the Lord Chief Justice, who appears to have got these from you, or from the Treasury, without any difficulty. The copies have been made at the cost of the public, and he, in this case, is not entitled to one whit more favour than myself, unless, indeed, the Treasury are prepared, in all concerning that Trial, to help one side and to harm the other. For my own part I cannot guess why *you* should thus identify yourself with the scandals perpetrated in that atrocious prosecution, or why you should deny me this copy; to grant which could do you no injury, and would do me, and the readers of that Trial, great good.

Surely you cannot fear to give me an authentic copy of what was uttered. "*What I spake, I spake openly to the world; and in secret have I said nothing!*" Can it be that if it is still refused to me, it may be only that the enemy may have a chance of saying, "He had no authentic copy. The copy which he has published is not a report of what actually was said: let no reliance be placed upon it?" If this be the secret design, I can only say that it is discreditable to all concerned, though it is quite in accordance with everything else connected with that infamous Trial.

Hoping that when you have re-considered, you will give me what I ask,—I am, Sir, your obedient servant,

R'ght Hon. R. A. CROSS, M.P. E. V. KENEALY.

To the foregoing letter Mr. CROSS has sent no reply; which, we think, may be regarded as a tacit admission that Mr. CROSS cannot deny that printed copies exist, notwithstanding the persistent assertions to the contrary during the Trial.

Dr. KENEALY also wrote to the Shorthand Writers offering to buy a copy, and received the following answer:—

38, Lincoln's-inn-fields, W.C.,
March 23rd, 1878.

SIR,—In answer to your enquiry, it is not in our power to let you have a manuscript copy of the Speech of Dr. KENEALY, to which you refer.—We are, sir, your obedient servants,

CHERER, BENNETT, AND DAVIS.

E. V. KENEALY, ESQ.

A gentleman who signs his name "Q. C.," having read the foregoing Correspondence, addressed the following to the Paper with which Dr. KENEALY was generally supposed to be connected. After mentioning Mr. CROSS's strange proceedings in the case of MINA JURY, the writer proceeds:—

"Again, observe with what folly he has behaved with regard to the 'Summing-up' in the TICHBORNE Trial. Instead of giving it at once, freely, as he ought to have done, he shirks and schemes, and takes refuge in a 'practice,' of which no one believes a syllable. Was he absurd enough to fancy that Dr. KENEALY would be thus put off? Perhaps he thought the Doctor would drop it, sooner than receive another of Mr. LIDDELL's insulting replies. And this indeed seems to have been a calculation not made without some basis, for, according to the last ENGLISHMAN, the Doctor would not have again applied had he not been impelled to do so by remonstrances from all quarters, urging him not to let the matter drop. And now, what has this 'clever' Home Secretary caused to be elicited? That which would probably never have been known in our time, but for this 'dog in the manger' refusal. I allude to the unearthing of another ugly 'lie,' used by the Crown in the TICHBORNE Trial. All the world knows how it was announced in the Queen's Bench, on several occasions, that no more printing of the proceedings would be done, because 'of the expense.' Dr. KENEALY protested against this, but was always solemnly assured that it could not be permitted, as 'the Treasury had given an order,' &c., &c. And now, what do we find? Why, that 'it is all a lie,' as the Treasury *did* print, after it declared it would not; and kept away the printed matter from the gentlemen employed for the Defence—thus, of course, greatly impeding and even hampering them in the conduct of that most difficult Trial. *This is proved by the Chief Justice's Title Page to his Summing-up, in which he describes it as* REPRINTED, &c. Can the force of Fraud and Lying farther go? And is there anything too 'strong' to be said of that infamous Prosecution, and of all connected with it?—I am, sir, yours truly, Q. C.

"P.S.—Nobody wonders now why it was that the Chief Justice went out of his way, as he did, to justify Falsehood, for he could not fail to be aware of what was going on—so he did the best for it that he could. But what everybody *does* wonder at is, that no Bishop in the Lords, and no gentleman in the Commons, has ever reprobated his conduct as it so well merits. Are there any true *gentlemen* in the House of Commons at all? If I may be allowed to say so, I very much doubt it. Not one word have they to say in favour of a man unjustly ruined. All their efforts are to shield profligates, adulterers and seducers like LEITRIM, BELLEW, COCKBURN, HOLKER and Co.; and to hoot down the heroic members who seek to bring their wickedness to light. Sir, I hope you will continue in the high, chivalric path in which you have entered. You are another DON QUIXOTE, I own; and I suppose, like him, you will be eventually crushed and killed. But the DON is acknowledged by all to be one of the truest gentlemen in heart and action that fiction has ever drawn; and though he waged an unsuccessful war against real or imaginary wrongs, all confess in him a true hero of his age, and the model of a brave and perfect knight of GOD."

No further steps being taken, the Note that follows appeared in the ENGLISHMAN for May 11th, 1878:—

"We have received the following, which we believe to be authentic. It is an additional revelation of the false and horrible system that pervades all our Public Departments. According to this, Mr. LOWE, as Home Secretary during the TICHBORNE Trial, deliberately sanctions a fraud on the Claimant; and supports that fraud by a falsehood, stated frequently in open Court, that the Treasury had given orders not to print any more of the proceedings, in order to save expense. Dr. KENEALY remonstrated against this three or four times; but the "authorities" pretended to be inflexible. During the whole of this farce, they went on with the printing as usual. This is proved by the word "REPRINTED" on the title-page of the Chief Justice's Summing-up; and receives further corroboration by the letter that follows. We must ask our readers whether they ever heard of such a mass of wickedness as has been made manifest in that accursed Trial? And we point to the unexampled folly of the present Home Secretary, in taking it up, and backing it, instead of exposing it to the world, like a man. If he were a man he would do so. As to Mr. LOWE, what shall we say? But the Privy Councillor who deliberately slandered and belied his Sovereign, and was afterwards forced to own the lie, when the QUEEN herself contradicted it—surely *he* needs no comment from us.

MR. CROSS AND THE SUMMING-UP.

TO THE EDITOR OF THE 'ENGLISHMAN.'

Treasury, Whitehall, May 4, 1878.

SIR,—I think you are hard upon the Home Secretary. What could he do, but as he has done? Dr. KENEALY asked him to lend him a copy in manuscript of his Summing-up in the TICHBORNE Trial, as he wanted it for the Report. Such a request would have been granted, as a matter of course; but the fact is, *we have not a manuscript copy*. Well, but then you ask, why could not Mr. CROSS say so? Because we have several printed copies, and if Mr. CROSS had been asked what had become of the manuscript copies he would have had to confess that they went to the printers in order to be set up in type. Well—but why could he not state this? Because to do so would have been to convict the Treasury of deceit and lying; for they announced to the world during the Trial that they were *not* printing these things, while they were doing so all the time; but they had no wish to help the Claimant by letting his Counsel have copies; and so they resorted to this device. This was done by Mr. LOWE'S orders, and to my positive knowledge at the request of the Chief Justice. How then could you expect Mr. CROSS to split upon this department? and expose one of its many falsehoods? This I say in sadness; for I am ONE OF THE CLERKS."

This letter appears to have excited some attention; and the following appeared in the ENGLISHMAN, for July 13, 1878, being Number 223:

"WE have inserted a letter from a Correspondent, who proves himself to be very regardful about Mr. LOWE'S reputation. Will he allow us to remind him of what a leading Paper said of Mr. LOWE a short time since, in regard to his statement calumniating the QUEEN?

"Mr. LOWE suffered last night a rebuke which no politician of equal importance ever received, or indeed merited. He was plainly told by the Prime Minister that he had made calumnious and utterly unfounded statements, and there was not a man in the House who could venture to contest the accuracy of Mr. DISRAELI'S assertion. Mr. LOWE'S reply to Mr. LEWIS was utterly wanting in propriety. It was really nothing more than an attempt to cover a gross blunder by some poor witticisms and an absurd assumption of dignity. If the question had been left to Mr. LEWIS and Mr. LOWE, the right hon. gentleman might, perhaps, have got off by this device; but the Prime Minister felt it necessary to interpose, and to answer Mr. LOWE'S reckless and calumnious assertions by a statement made with her Majesty's authority. It is, of course, unusual to bring her Majesty's name into Parliamentary debates, but after the course taken by Mr. LOWE it was necessary. The member for the University of London made a statement which has been proved to be utterly false. The statement affected the honour and dignity of the Crown, and there can be no doubt that, although the primary purpose of the speaker was to injure the Ministry, he had no scruple about casting discredit upon the Sovereign. Mr. LOWE had been already repudiated by Mr. GLADSTONE. Last night Mr. DISRAELI showed that he had not the slightest foundation for his statements, and showed it, too, in language which, although not too strong for the occasion, makes it hardly possible for Mr. LOWE to assume henceforth to speak in the name of English gentlemen."

The following are the words of the Prime Minister, Mr. DISRAELI, Tuesday, May 2nd, 1876, referred to in the above note:—

"It was not the boisterous festivity of the East Retford assembly that has led to these painful inquiries, but that it was the circumstance that a politician, and a politician of a distinguished character, who had held high and responsible office—(hear, hear)—while the country was interested in the discussion of a great public question, should have taken that opportunity of making statements which were monstrous, if they were true—(cheers)—but which if they were not true must be described by an epithet I cannot find in my vocabulary. (Loud cheers.) Sir, did the Right Hon. Gentleman or not—not intimate, not insinuate—but I say broadly, state to the people of this country that the Royal Titles measure was introduced to the notice of Parliament by the unconstitutional and personal influence of the Sovereign? (Cheers.) Did he or did he not take that occasion to hold up to public prejudice, and I will say public infamy, the Chief Minister, asserting that under circumstances detailed by the Right Hon. Gentleman with minuteness that after that gracious Sovereign had been balked and baffled in her appeals to preceding Ministers she found a pliant and a servile instrument in the Minister who was now ready to do her will? (Loud and prolonged cheers and counter-cheers.) . . . There were two chief Ministers to whom the Sovereign of this country had appealed to carry a measure similar to the Royal Titles Bill—a measure with that object at least—and who had refused to undertake an office which they believed was dangerous to the State and to the honour of the Crown. Well, that statement made by a Privy Councillor, one who had been a Cabinet Minister, naturally affected, and does affect to this moment, the opinion and feeling of this country. (Loud cheers.) Well, then, was it true? (Hear, hear.) If it were true it ought not to have been made—(oh, oh)—but that is a part of the case on which I will not dwell. (Cheers.) That, it must be obvious to every Hon. Gentleman, has been touched upon sufficiently. I confine myself on the present occasion to the inquiry, is it true? . . . . Now this matter having agitated the country, and having been brought before the attention of Parliament, it is most unwise that it should be left in doubt—that there should be any hesitation in the public mind—for otherwise these calumnies crop up again—(cheers)—and these reckless speakers are again in time the source of authenticity for statements which have not been authoritatively denied and destroyed. (Hear, hear.) I speak with the greatest difficulty at this moment, and I can only speak with the indulgence of the House. I have the authority of her Majesty to make a statement on her part . . . that there is not the slightest foundation for the statement which has been made—(cheers)—that she made propositions such as described in the reckless speech to any Minister at any time. (Renewed cheers.) The whole thing is utterly unfounded, and merely rests upon that sort of calumnious gossip—(Oh, and hear, hear)—which unfortunately, I suppose, does always prevail, but which one did not suppose would come from the mouth of a Privy Councillor and one of her Cabinet Ministers. (Cheers.)"

"After this need our worthy Correspondent have been surprised at any of Mr. LOWE'S proceedings in the Home Office or elsewhere, or chary about his good name and fame?

MR. ROBERT LOWE.

TO THE EDITOR OF THE 'ENGLISHMAN.'

(No. 1.)

SIR,—Perhaps you will be good enough to insert in your next, for the benefit of your readers, these few lines, and the following letter, which I thought it to be my duty to send to Mr. R. LOWE, M.P., on the 25th of May, that he as an honourable man might have the opportunity to defend or purge himself of the sad and wicked conduct imputed to him by some gentleman at the Treasury, Whitehall, on May 4th inst.

But as Mr. LOWE has not done so, it now seems to me he must have lost all his political self-respect.

I therefore wish to inform him and his future supporters in the House of Commons, that I can no longer, although I am a Liberal in politics, follow such leaders.

For if Mr. LOWE has no self-respect, as it appears he has not, it would be unreasonable for the people of this country to expect him to have any respect for them.

How can such a man honestly represent the people of England if this charge be true?

Let your readers think, and answer this.

With these few words I must leave the public to form their own opinion.—I am, Sir, yours truly, A LIBERAL.

Cambridgeshire, May 31st, 1878.

P.S.—After writing the above letter to send to your paper I considered it best to lay it aside for a while, as it was in my opinion not a convenient or a suitable season to publish the same; but now the Treasury think it wise to prosecute Mr. CHARLES MARVIN for "exposing" some one in the Cabinet, if not the whole Cabinet, it is just possible that one or more of the late Liberal Cabinet may at once feel that it is necessary to expose publicly the trickery and wicked acts said to have been committed by Mr. LOWE and others in the TICHBORNE Case. Let any person for a moment consider that gross charge made against him by one of the Clerks at the Home Office, and I think such would find that it is no less a serious matter to the British public than the present paper on the Sham Congress at Berlin.

[Copy.]
To the Right Hon. R. Lowe, M.P.
(No. 2.)

Sir,—Ever since about the 11th of May inst. I have perused my 'Times' paper daily, feeling sure that you would at once challenge your accuser to make good his charge before a British public, or cover him with shame and disgrace.

But you are silent as the grave! The charge that I refer to was made in a letter to a paper called the Englishman, and was written at the Treasury, Whitehall, on May 4th.

It seems in some respects to defend Mr. Cross, the Home Secretary, for not lending Dr. Kenealy, M.P., a copy of his Summing-up in the Tichborne Trial, and he wanted it for the Report.

But the part I wish to call your attention to is as follows: "Because to do so," he says, "would have been to convict the Treasury of deceit and lying; for they announced to the world during the Trial that they were not printing these things, while they were doing so all the time; and they had no wish to help the Claimant by letting his Counsel have copies, and so they resorted to this device. This was done by Mr. Lowe's orders, to my positive knowledge, at the request of the Chief Justice. How, then, could you expect Mr. Cross to split upon this department, and expose one of its many falsehoods? This I say in sadness, for I am, ONE OF THE CLERKS."

Now, Sir, I think you will agree with me that this is a very grave charge, and ought to be refuted without delay, if it can; for already some of your political opponents say, "You cannot," and others say, "You dare not take any notice of it." But I say, "How do you come to such a conclusion? for it is just possible Mr. Lowe has not seen same?" But, say they, "Do you suppose when there are near one hundred thousand of the Englishman per week sold, and which are principally read by the middle classes, that he would not know of it?" But that is not all, for three times that number learn weekly what that paper contains. Therefore, such a serious charge as the above ought to be denied, and especially as it is made by one of the Clerks at the Home office. Clerks at this office are about four in number, who receive about £1,000 per annum, and, I hope, are gentlemen: this being so, such a charge, from such a quarter, is serious indeed.

And not only to you, Sir, who have the honour to be a member of The Most Honourable Privy Council, but to the Queen, and our country also. And as such, I take this opportunity of forwarding to you the Englishman, which contains this said letter and charge, and after you have perused it, I have no doubt (if well) but what you will have the consciousness to know what duty and justice demand at your hands.

And let us hope that you will, by the help of God, have moral courage enough to come before the world, and in the sight and name of God, make known the real worth of such a charge without a day's delay.—I have the honour to be your obedient servant, A LIBERAL.

P.S.—I have no desire to publish this letter, but should you not take any notice of the same in daily papers by the 31st inst., I shall feel it my duty for the benefit of the public to publish it; and then they will know that you have had ample opportunities to read that sad charge in the Englishman against you."

MISS KATE DOUGHTY AND MISS NANGLE AT TICHBORNE.

Note.—Every effort has been made to render this report of the Summing-up as accurate as possible. All Dr. Kenealy's own Notes have been referred to; the published newspaper reports also; and as much else as could be got from private sources has been consulted and used. But Dr. Kenealy never knew, until he had set about this task, how his Speech had been misreported; and with what skill the reporters for the press had done what they could to weaken its argument, and to disguise or distort its effect.

DR. KENEALY'S SUMMING-UP FOR THE DEFENCE.

ONE HUNDRED AND THIRTY-SECOND DAY.—TUESDAY DECEMBER 2ND, 1873.

Master COCKBURN (addressing JEAN LUIE): Are you ready with your bail?

JEAN LUIE: I really do not know whether he is here. Where is Mr. WHALLEY?

Mr. CHARLES HARCOURT (Defendant's Attorney): He will be here presently.

(JEAN LUIE remained during the day in charge of Mr. FRAYLING, junior, the Tipstaff of the Court.)

Dr. KENEALY: I commence my observations in defence of the Accused by reverently invoking the Supreme Judge of the Universe, that in this mighty Trial He may give us of that Light which is His own essential attribute;—that He may guide us by wisdom, by impartiality, by the spirit of justice—justice the most celestial of all human qualities—unto a true verdict on the issue before us; that we may not be misled by any temporal consideration; by fear, by favour, by affection, to deviate in the least degree from the glorious path of sunbright rectitude; but that we may all of us bear in mind that according to the justice which we mete out here, so shall be the justice administered to ourselves in the dread Hereafter. There is not one of us that will not have to stand before that Awful Throne which shimmers far away in the Future, to answer for the life on earth; there is not one of us who will not have to give a reason for the motives by which he was influenced in all the essential acts of his existence; so also for our part in this great drama which is now being acted before an astonished world, woe be unto him who shall not have well and worthily performed his duty; it were better for him that a millstone were hanged about his neck, and that he were drowned in the depths of the sea. Not impelled by base self-interest, not deviating from right at the bidding of might; not misled by vanity, or flattery, or bribes, or careless haste, or unrighteous purposes, but stedfastly resolving to be just, and just alone, beyond all other considerations. And when the Eternal, who is the Source of all Justice, questions each and all of us for our dealings with this man, may we be then prepared to give an answer to that terrible demand which shall satisfy our own consciences, and may, we hope, satisfy our Judge also that we have done well.

Gentlemen of the Jury: The language which I have ventured to address you, is but a faint reflex of the thoughts which have occupied my mind for months and months: indeed, ever since I became professionally involved in this mighty issue. It would be impossible for me to describe the feeling of anxious, serious, and terrible responsibility which I have had during the whole of this sad and tragic and protracted investigation. Never before has it fallen to my lot; never again in the course, probably, of the existence of any of us, will it fall to his lot, to be engaged in a case of such magnitude; involving not only considerations which affect ourselves in the present, but also those which every man holds dearer than life itself—the name which he must bear in future times; his reputation with future men; the opinion in which coming generations will hold his conduct. Gentlemen, I think there are a good many of us who are on their trial now, as well as this Defendant. I may be censured for the saying, but we are *all* on trial before the people of England. The Judges, of course, are not—because they are *certain* to award justice. But we at the bar are, because on the one side we are bound to do our duty to the Crown, and on the other to the accused. You Jurymen are also called upon to give a true verdict according to the evidence, as you will have to account to God Himself for what you have done in this life. Of those who are Witnesses I need not speak. There is not one of them who is not really on his trial before heaven for even the slightest word that he enunciates here. Upon all there is a weighty, almost a dread responsibility. Woe be unto those who do not feel it! For my own part I have sought in every way that I found it possible, to enlighten my own mind on this complicated question, so that I might possibly, through *my* knowledge, assist *you*. I have viewed it in every phase and aspect; from every point and from every side on which I thought it capable of being contemplated, in order to satisfy my understanding as to where Truth and Justice lay. I have humbly prayed to the Source of all Strength and Wisdom that I might receive vigour, mental as well as physical, so as to pass well through this arduous, this almost colossal undertaking. I have laid aside, I hope, all merely selfish thoughts or personal considerations. I have endeavoured, as far as in me lies, to divest myself of the character and the feelings of an advocate; and ceasing to be a partisan, I have gone over and examined the features of this astounding picture as if I were only a spectator or a critic, searching for its excellencies, hiding not from my observation its dark points or its defects. Nay, I have even sought to look with a species of judicial impartiality over the whole; and though I am not—according to the practise of the bar—at liberty to reveal to you what the result of my cogitations has been and is, because to do this in modern times (although the rule has been emphatically broken by ERSKINE) has been deemed irregular for Counsel, nor is he thought at liberty to express his own opinion as to the innocence of his client, or the guilt of the man whom he may prosecute——

The LORD CHIEF JUSTICE: Could you speak a little louder, Dr. KENEALY? I do not wish you to strain your voice; I know you must nurse it: but not half of what you have said has reached my ears. A little louder and we should all hear.*

Dr. KENEALY: I shall endeavour, my lord. This, however, I *may* say, that I am without the slightest apprehension as to the ultimate result of this Trial. There may have been—there probably were—occasions on which I have exhibited more than the zeal of that impartial Judge, whose attributes I have sought to centre in myself in this enquiry. There may have been occasions on which I have been thought to show too much warmth; but at all times I have been actuated only by an overwhelming sense of duty to the man whose interests I represent; my duty to Justice and, I hope, Truth; and my solemn, sacred duty to you, Gentlemen, who are his sole and absolute Judges. If I have occasionally gone beyond the strict bounds of moderation, I am sure that you will make allowance for me, and will grant me your indulgence; that you will bear in mind the enormous and almost crushing difficulties under which I have been labouring from the very first, and the mighty strain which has weighed upon my mind without relaxation, or even help, for months and months. To this add the pressure—I might have said the misery—which I have felt because I have never been properly instructed nor adequately assisted in this matter. My client has had a legion of advisers, counsellors, and attorneys who have rendered me hardly any help; and although we are told that in a multitude of such there is wisdom, I myself have painfully experienced during this Trial that the multitude encumbered, or rather, overwhelmed me with their help, and that generally their counsels were the opposite of wise. But let this complaint pass. You have seen my helpless condition from day to day; you have watched the difficulties under which I staggered—difficulties which have been so tremendous that they cannot be overstated. My pain and anxieties you have read in my agitated look and voice, and witnessed for yourselves that I was, as it were, unarmed and alone, while I was encompassed by strong men. I hope, therefore, that you will take these things also into your consideration, and regard my shortcomings with friendliness, with sympathy, and forbearance. I know well—I have not been without hints and intimations—of what may possibly await myself for the part which I have taken, for the stand which I have made in this great Trial. I know that I have made, and that I still may make, a thousand personal and bitter enemies. For the great zeal and, I hope, the energy which I have thrown into the cause of this unhappy man, I am sure that I shall never be forgiven. But I should for ever be ashamed of myself if any selfish thoughts, even the certainty of ruin for life, had the least influence on me in the discharge of my duty, and should despise myself for the remainder of my days if, for the purpose of obtaining anyone's favour, I betrayed or deserted this man. I have not done so, and I will not do so. I may indeed exile myself from the hope of a great place by my conduct during this Trial. But I would rather walk the streets, and even beg my way in poverty, than soar to the highest dignity of the Bench with the consciousness that I had disgraced myself. I would rather wander through life an impoverished man than roll in an equipage, clothed in golden or in silken attire, knowing all the time that I was despicable and despised; feeling also that I despised myself, and that I was leaving to my children an inheritance of shame and a record of dishonour.

Gentlemen, I have told you that I approach the termination of this Trial without any serious apprehension as to the result. I do not entertain a doubt, and I never have entertained a doubt, since I commenced my evidence for the Defence, of what your final verdict ought to be. I know that I am addressing a Jury of Englishmen, an institution, a tribunal, which has been the honour of our country, and has won the applause of the world since it was first founded and its manifold excellencies were made known. There have been occasions, indeed, when it was perverted to crush innocence and to screen guilt; to support evil conspirators or wicked individuals in their criminal purposes; to be the instrument of oppression where freedom was attacked; but there have also been occasions (as in HONE'S prosecution) where twelve men in the Jury-box have been superior to all selfishness, or passion, or prejudice; where they have made great

* Note how the L. C. J. here interposed, just when he fancied Dr. KENEALY was about to express his own personal conviction of his Client's innocence.

and extraordinary sacrifices in the performance of the exalted duties entrusted to them, and have been, as it were, giants in spirit, in boldness and in resolve. Sometimes they have gone wrong: they have wandered out of the right path: they have acted like all of us, frailly and fallibly on occasions when duty pointed otherwise. But this present tribunal, which I have the honour to address, I trust will not do so. I believe in your fairness. I confide in your independence; I rely on your high sense of responsibility to God and to the People—because this man is on his Trial before his country, and you are here the representatives of that country. Knowing, feeling, animated by these things, I entertain no doubt, notwithstanding all that has been, or may yet be, used against me in the way of argument or sophistry, that when you come to lay your heads together, and to consult upon your final verdict, that you twelve will be able to arrive at the real facts, the real truth, the absolute and unerring realities of this Case in their entire veracity, and that mine, consequently, must be the victory and the verdict. Bear in mind all of you, I beseech, the Rules which MATTHEW HALE, once Chief Justice of this Court, laid down for himself when presiding at Trials; they are as applicable to the conduct of Jurymen as they are to Judges. Pardon me if I read a few of them over to you. They ought to be written in letters of gold over every Jury-box, and on the portals into every Court. "Let me bear in mind," he says,—"that, in the execution of justice, I carefully lay aside my own passions, and not give way to them, however provoked. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as unseasonable and interruptions. That I suffer not myself to be prepossessed with any judgment at all till the whole business and both parties be heard. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard. That I be not biassed with compassion to the poor, or favour to the rich, in point of justice. That popular or court applause or distaste have no influence in anything I do in point of distribution of justice. Not to be solicitous what men will say or think, so long as I keep myself exactly according to the rule of justice. If, in criminals, it be a measuring cast, to incline to mercy and acquittal. To abhor all private solicitations, of what kind soever, and by whomsoever, in matters depending." Nor ought we to forget, at the same time, what Lord BACON, in his advice to Mr. Justice HUTTON, says:—"You should be a light to Jurors to open their eyes, but not a guide to lead them by the nose." (Works, Vol. VII., p. 271, ed. Montagu.) And yet how often have those noble maxims been forgotten or despised!

Gentlemen, if you will only act upon these golden rules, as I trust you may—as I am persuaded that you will, I shall be under no apprehension. Nay, do I not even already feel inspired with good hopes? The eyes of the whole earth are fixed upon you: your consciences will guide you well and wisely: never can I allow the thought to enter my mind that Truth shall fail, and Falsehood win; or that you will be guided by any other consideration than duty to your God, duty to your country, honour to yourselves. What is there on earth of value but truth and justice? These being gone, life is not worth having. What makes an Englishman respected and trusted all over the world, but the knowledge which all other people entertain of his truth, his courage, his fidelity, his devotion to justice and fair play? and that, as a rule, he will sacrifice everything rather than break his plighted word? There is a well-known Pagan saying, *Vincet omnia Veritas;* truth shall overcome all things: and we ourselves have a fixed idea that truth is great and must prevail. Are these ancient maxims lies? Are the doctrines and creeds of Heathen theology wholly purposeless and false in these days of Christian enlightenment? Truth in this case, I say, is on my side—all-conquering truth; and in truth I have my hope. Do I fear the power of falsehood and of gold? I do fear them—but in this sense. They cause no terror to my own heart: yet I dread their influences on others. But I will fight them now to the death. I will fight, because I feel that I can conquer. There are occasions I own, when Truth does not vanquish and overcome her enemies, and when Falsehood quits the field in triumph. But let us hope that such occasions are few and far between; and that for the present there shall be no such result. But I cannot conquer unless you are just, unless you are wholly incorrupt, unless you rise to the heroic heights to which I invite you. Then, indeed, will be a spectacle of grandeur seen, such as the world does not often witness; and prejudice and power shall be beaten down by the sword of justice. Falsehood no doubt is a mighty giant, and it is much to be regretted that Guilt should have the terrible influence which it sometimes has. But the power of Falsehood exists only for a time: it may support itself for a period by gold and by the strong hand; and I think I shall demonstrate to you that wealth and corrupting influences have been used unsparingly in this Case; but in the end Falsehood fails: and God be thanked that it is so. I own that there are moments when I feel deeply alarmed in the presence of unscrupulous Might, using an unscrupulous hand: but I do not, nor will I, retreat from grappling with it. I will not yield to this my adversary, I will fight while I have breath:—and, oh! what a great and glorious sight it will be to all men, if the Force that I resist shall be beaten back and destroyed, as I hope that it will be before this Trial closes. And, gentlemen, permit me to say, that every lover of Truth and Order in the world will experience an ennobling and proud joy if it shall come to pass that a prosecution such as I shall demonstrate this to be, shall be disposed of, and disposed of rightly, without prejudice, or passion, or dishonesty. I make all allowances for the feebleness of humanity; for the thousand things that operate upon it, frequently to no just end; but we, who are here, must nerve ourselves resolutely to resist any influences whatever but those of Justice in the present. We must raise ourselves to a high and glorious standpoint. We must walk as it were in fair and sun-bright regions: we must divest ourselves for the moment as far as we can of all the mere infirmities of mortality, and take a view of this history wholly unimpassioned; an enlarged and liberal view without any intermingling of the mean, the low, the comical, or the absurd. You may contemplate the greatest work of art that the painter ever put on canvas, or on wall; and in the finest picture you will find some imperfections. But that is not the true way in which you should view this gentleman's history or career. You must examine it as a picture of human life, deeply chequered with light and shade: but with shade perhaps most prevailing. There are errors, and blots, and smudges, but it is a true picture as a whole. It is all one consistent history: it is in harmony from beginning to end; from the time when entering upon life he surrendered himself to folly until this instant, when he finds himself before you, his countrymen, a victim of that folly, and bound to meet and answer the gravest charges. He, if any man, must console himself, if possible, for many of his misfortunes by the old maxim: *Qui peccat ebrius, luat sobrius*; if consolation can indeed be desired from the committal of past foolishness. If his youth has been indiscreet, and even evil, he has bitterly atoned in the days of his maturity and his manhood; most bitterly since his return to his native land, where all his kith and kin are armed to the teeth against his claims. There is probably not a man among you who has not formed some opinion of this Case before you were empannelled. You would have been more than human if you had not. But, Gentlemen, if you *have* formed such opinions, I must ask you to ignore them. Allow them not, I beg, to influence you in the least upon this great issue; let your conclusion be irrespective of all other things than *facts* proved before you in evidence; by an honest and passionless review of what you have heard and seen here, and not by what may have been tattled to you in corners, or slyly whispered into your ears outside these walls. One of my main dangers and difficulties in this Case is, that some before me may have formed strong opinions at a time when he never dreamed of the important part which he might have subsequently to play in the drama of this gentleman's eventful life.* Many may have gone here and there, and have been gossipped to, or buttonholed by fools, or rogues, or have picked up their opinions from the newspapers, or in a hundred other ways may have attained a forgone conclusion. Still, gentlemen, I hope we all know our duty better than to allow such opinions to guide us. There is no man—not even a Judge—who may not have said in this public dining-room, or in that drawing-room, or in that public-hall, or even in the Court itself, "I think the Claimant is an Impostor. *He is the greatest Impostor that ever appeared in England. He is a man deserving of the highest penalty of the Law*† Nay, he may have even gone farther, and declared that if ever he had an opportunity of adjudicating upon this man he would relentlessly punish him as an Impostor, and send him to the penal servitude that he deserved.

The LORD CHIEF JUSTICE *(with a face fearfully distorted, and even agonised, and a tremulous voice, scarcely audible)*: Who has said that?

Dr. KENEALY: My lord, I did not say that anybody has said it.

The LORD CHIEF JUSTICE: The suggestion is that somebody has said it. Who could have said it?

Dr. KENEALY: Your lordship will please to bear in mind my actual words. I have not charged anyone. I have uttered nothing that in my humble judgment justifies your lordship's interruption. But I resume, and I say to you, Gentlemen, that if it were possible that any of you, or even a Judge, had gone to such a length as that, you would nevertheless not hesitate finally as to what it was right for you to do. You would have both the courage and the honesty to proclaim, "When I spoke on former occasions I spoke rashly, and without full knowledge; when I hastily pronounced judgment upon this Man, I did so without having the whole light of truth before my eyes. Now I know differently and better. I have heard all, and have formed my conclusions: and I do not hesitate to say that I was credulous, incautious, and even wrong in the words I used, and in the judgment which I pronounced."

Gentlemen, I have spoken of opinions which may possibly have been formed, and incautious sentences which may have been delivered. But in addition to these quicksands in my way, there may be other influences and feelings, of which I earnestly and humbly beg you to despoil your minds—I mean the influence and feeling of powerful prejudices. Prejudice has been well defined by PAINE to be "the spider of the mind." Without our knowledge, and as it were in a twilight, when our eyes are dimmed, she casts a mist over our reason. For a time she de-

* How true this was is demonstrated by the article entitled "TICHBORNE Jurors," which is re-printed at the end of this Trial.

† Words to this effect are known to have been used by the Lord Chief Justice long before he sat to try the Claimant.

prives us of that heavenly gift. We seem to ourselves to be actuated by the fairest, purest, and highest sentiments; to use all the powers of our understanding; to contemplate the object we are scanning in the lucid mirror of Truth, and by her golden lamp, while all the time we are looking through a distorted medium; are blinded by clouds and vapours and glamour, and are bound hand and foot by a siren which seeks only to fascinate and mislead. This influence very frequently operates upon the noblest minds and makes them unconsciously its slaves. Prejudice constantly arises from a thousand different mean and miserable sources. It seizes on the understanding before it has considered or reflected. We sometimes look at a face: the very aspect of it prejudices us against the owner. Our judgment is gone; we surrender ourselves to feeling. We fancy that the prejudice which we hold is the result of faith, and that innate desire which most men possess, namely, to avoid error. We are wrong. Prejudice, without our knowing it, clouds, darkens, and blackens the whole atmosphere of the understanding; and we often entertain strong antipathies, and even powerful hostilities against others on grounds that will not bear examination. Rightly or wrongly, there is among certain persons in this country an astounding prejudice against my client. Upon that I pass no opinion. They are persons who do not know all, and their notions are consequently not very much to be considered. But the feeling exists, and there is not one of you in that box who does not know it. Well; if any of you are under its spell, labour hard to release yourselves; be guided only by the spirit of Right and Justice, which is the noblest attribute of the human mind, and which, when all other things in this fleeting, fading, and miserable life have gone away, will be our firmest consolation at the last. For this is certain and true as God Himself: that you may oppress, you may ruin a man by persecution; you may destroy all his worldly hopes and prospects and interests; but so long as his conscience remains pure and unsullied, and so long as his own mind tells him that he has endeavoured to do right in all his days, so long you can never make that man unhappy. GOD has so fenced and clothed his soul about with the armour of innocence, that no evil can reach him; and though what are called "worldly miseries and misfortunes" may envelope him, his conscience will be a sun-bright splendour in the very centre of his darkness, which will make him happy through want, and sorrowing, and woe. Let *us* therefore, Gentlemen, divest ourselves wholly of all prejudice in this Case, if we have the misfortune to entertain any. Let us look into the mirror of truth. Let us bear in mind the hundreds of Christian martyrs whom in the early ages, prejudice, and prejudice alone, condemned to the tiger or to the block. Prejudice for many years involved us in dreadful foreign wars; it supported negro slavery in America; it has perpetually involved men and nations in crime. Do I hold up the slaves of prejudice to everlasting infamy? No—they were honest. But they yielded to passion, to sentiment, to over-heated zeal. They never exercised cool judgment. Hence under its spell they sent GALILEO to a dungeon, and SERVETUS to the burning pile; to SOCRATES they gave the poisoned cup, and to DEFOE, the pillory. We read the career of CALAS,* and mark the exertions of VOLTAIRE in his behalf; we admire his labours for that unhappy man, who, though innocent, was condemned; we are shocked, and stunned, and appalled that prejudice should have had so much sway; we cry out, How differently we should have behaved had *we* lived in these times, which we call ages of darkness. Such are our sentiments: Do we always act upon them? If therefore you are under any spell of prejudice, dismiss it instantly and for ever. Exhibit that impartiality which is supposed to exist only in higher places; but which I have seen as nobly and as patiently exercised by our common Juries as I have by the most enlightened Judges. This Trial differs from all other Trials. It will pass for ever into the judicial history of our country; it is the greatest Trial that ever occupied the attention of England, or of the world. Hundreds of years hence this Trial will be studied by lawyers, by antiquaries, by students, by all who investigate the history of the country. Your names will be preserved for ever; and will be known by generations of men yet unborn, who will be rivetted by this amazing story. They will scan every page with care, with interest, with attention. Prejudice will not cloud the enlightened judgment of times to come. Our descendants will read with surprise, with admiration, with sympathy, with horror, the various pages in which the pictures that have passed before us are traced. Ask yourselves, each and all, these questions: Shall our names descend with honour, or with disgrace? Shall we appear to future men in a halo of light, or in a nimbus of darkness? Our children's children will point to us with pride, or be ashamed of our dishonour. *We* shall pass away—but the honour or dishonour will not pass away, but be everlasting. On our deathbeds the memory of this Trial, as the great event in our lives, will rise before us. Happy then if we can look back upon the past without reproach. Thrice unhappy if we feel that from weariness, or fickleness, or in deference to this or that person, or to influence, or to cupidity we have sacrificed honour, and polluted conscience. Bear in mind, I implore you, the ANNESLEY Trial †—the glory and the disgrace of the last century: the lustre which crowns the Judges and the Jury who were engaged in that wonderful enquiry, and who decided honourably according to the law, for Right against Might. JAMES ANNESLEY, the Plaintiff in that action, was only a poor and defenceless man. He was the only son and rightful heir of his father Lord ALTHAM; son of the Earl of ANNESLEY, and the owner of large estates. His mother was MARY SHEFFIELD, daughter of the Duke of BUCKINGHAM. The father, Lord ALTHAM, was a miserable profligate; he passed all his time in drunkenness and debauchery. He quarrelled and parted with his wife; and lived with a Miss GREGORY, who had the effrontery to call herself Lady ALTHAM. The influence which this abandoned woman had over him gradually weaned away all the affection which he should have given to his son. She misrepresented all the actions of the child: she pretended that he was not his child at all, though she failed to persuade him into any such notion. He was, like so many other lords, miserably poor; and he sought to procure money by all manner of means. He was advised that if his son were out of the way, he might raise large sums of money by way of reversions, and the child was sent into the country, and brought up privately, so that it should not be known that there was any heir to the estates but Lord ALTHAM himself. SMOLLETT thus describes the mode in which this profligate lord acted, being himself personally well acquainted with all the details of the history. Lord ALTHAM, he says, was a man of weak intellect, and utterly void of any fixed principle of action. He was reduced to such a pitch of misery that he was often obliged to pawn his wearing apparel in order to procure the common necessaries of life, and having no other fund remaining with which he could relieve his present necessities, except a sale of the reversion of the ANGLESEA estate, to which the nonage of his son was an effectual bar, he was advised by his virtuous brother (RICHARD) and the rest of his counsellors, to surmount this difficulty by secreting his son, and spreading a report of his death. This honest project he the more readily embraced, because he knew that no act of his could frustrate the child's succession. Accordingly the boy was removed from the school at which he was then boarded, to the house of one KEOGH, an agent and accomplice of the present Earl of ANGLESEA, where he was kept for several months closely confined, and in the meantime it was industriously reported that he was dead. This previous measure being taken, Lord ALTHAM published advertisements in the gazettes, offering reversions of the ANGLESEA estate for sale: and emissaries of various kinds were employed to inveigle such as were ignorant of the nature of the settlement of estates, or strangers to the affairs of his family. Some people, imposed upon by the report of the child's death, were drawn in to purchase, thinking themselves safe in the concurrence of his lordship's brother, upon presumption that he was next in remainder to the succession; others, tempted by the smallness of the price (which rarely exceeded half-a-year's purchase, as appears by many deeds), though they doubted the truth of the boy being dead, ran small risks, on the contingency of his dying before he should be of age, or in hopes of his being prevailed upon to confirm the grants of his father; and many more were treating with him on the same notions, when their transactions were suddenly interrupted, and the scheme of raising more money, for the present, defeated by the unexpected appearance of the boy, who, being naturally sprightly and impatient of restraint, had found means to break from his confinement, and wandered up and down the streets of Dublin, avoiding his father's house, and choosing to encounter all sorts of distress rather than subject himself again to the cruelty and malice of the woman who supplied his mother's place. Thus debarred his father's protection, and destitute of any fixed habitation, he herded with all the loose, idle, and disorderly youths in Dublin, skulking chiefly about the college, several members and students of which, taking pity on his misfortunes, supplied him at different times with clothes and money. In this unsettled and uncomfortable way of life did he remain, from the year 1725 to the latter end of November, 1727; at which time his father died so miserably poor that he was actually buried at the public expense. This unfortunate nobleman was no sooner dead than his brother RICHARD, now Earl of ANGLESEA, taking advantage of the nonage and helpless situation of his nephew, seized upon all the papers of the defunct, and afterwards usurped the title of Lord ALTHAM, to the surprise of the servants, and others who were acquainted with the affairs of the family. In order to make himself secure, he conceived the diabolical design of kidnapping his nephew, and having him sold for a slave. Accordingly he had him seized, and put on board a ship for His Majesty's plantations, and conveyed away from Dublin. He was sold to a rich planter; and after many years of misery, he found his way back and established his rights before an Irish Jury, though his uncle called hosts of Witnesses (as in this Case) to defeat his claim and swear that he was somebody else. Nay, that very same uncle had said that he did not care if it cost him £10,000 if he could get the Plaintiff (his own brother's only son) hanged. And yet we are told in this Case that uncles like the SEYMOURS, and aunts like Lady DOUGHTY, are the paragons of love, affection, and duty; and would have welcomed ROGER with open arms and longing hearts. I think I have read of uncles who were not so. Even in the nursery we learn the story of the wicked uncle in the Babes of the Wood. I see one of you smile, but there is wisdom to be gained even from a nursery ballad. At all events we know that in the ANNESLEY Case, the uncle of the Claimant did all he

* The story of CALAS appears 'Trial,' Vol III. pp. 242-244.

† Alluded to already, Vol. III. page 252. The reader is referred to SMOLLETT'S *Peregrine Pickle* for a curious history of this Case.

could to destroy the hopes and even take away the life of his own nephew. He failed, because the Juries in those days knew their duties and were honest. An English Jury instantly acquitted him of the false charge of murder, which his uncle, Lord ANGLESEA, trumped up against him; an Irish Special Jury, consisting of some of the first men in the country, under the presiding honesty of Three most learned Judges, passed a verdict which restored him to his rights—though that verdict was unhappily without fruit, for JAMES ANNESLEY died soon after; and the wicked uncle became eventually his heir.

In this Trial let me hope for a similar result. I appeal to your judgment, to your consciences, and to your honour. Never will the memory of this great legal battle pass away. As long as public libraries exist, and as long as curiosity is felt in the investigation of the records of past ages, so long will you and your names be objects of curiosity and enquiry—may I add of admiration for your justice if you do right; of scorn if you do wrong, to future students of History. It may come to pass that in those days the descendants of some of you may proudly exclaim, "One of my forefathers was a Juryman in the TICHBORNE Trial; and I can even now point to his conduct with joy and triumph." Such considerations may be disregarded by some. Those who hold the melancholy, the miserable creed, *Let us eat and drink, for to-morrow we die*, may laugh at the judgment of posterity; may be indifferent to its praise or censure; but I hope that every one of you twelve men will be actuated by too high and noble considerations as to take into account the mere present and utterly disdain future honour.

Gentlemen, let us ascend those glorious heights to which I invite you; let us put away our frailties; let us talk as man to man; let us lay aside the mask and domino. I wish to treat you with all respect. The judgment of twelve such men as I take you to be is entitled to the greatest weight. You represent the English people. How proud, how great is that representative character! Let me put this question to you: What were your opinions when you came into the box? You must have had some. Every Englishman has. If you were under prejudice, have you put it *away?* Have you listened impartially? Have you laid aside a "foregone conclusion," if you had one? If you have, how grand is your position. But if not, how arduous is your task. For it is no easy matter to dispossess the mind of prejudice or passion. The ANNESLEY Jury did so. So, I pray, may you.

Gentlemen, I must entreat your full indulgence in the address which I am about to deliver. I have experienced that indulgence when I spoke to you before; and when I am painfully conscious that I must have wearied you not a little. It was to myself an arduous and terrible toil. During the whole period, my days, my nights, were those of restlessness and anxiety. I came down here every morning with the feelings of the man who beheld a glittering sword, suspended only by a single hair, over the pillow where he laid his head. You also must have seen and felt for my condition; you heard me with patience; many of you with kindness and sympathy. The recollection of that sympathy is graven on my heart. Now also I must ask for indulgence. I shall make no short speech. I cannot do so. I shall endeavour to condense my views of this Trial, which is like the whole volume of SHAKESPERE'S plays—so various, so marvellous is the admixture of characters; ranging from the highest to the lowest; the clown and the patrician; Mr. Merryman, my Lady and my Lord. All that I can do to economise time and to spare *you*, I will; nevertheless, I cannot shrink from fulfilling my duty to the unhappy gentleman who sits in front of me; and I fear that I must trespass upon you for many days. For this, the Prosecution will in some measure be responsible. The enormous number of Witnesses whom they have called; the piles of documents which they have produced; the littlenesses, the meanness, the pettinesses with which they have overloaded their side of the case, are a powerful evidence of their conscious weakness; but are, nevertheless, necessary for me, if I would do justice to my client, to advert to as I pass along. I am sorry that such a vast amount of trash, of nonsense, and of rubbish, has been imported into this Court by the Prosecution. Nothing seemed too small for them to catch at in their extremity; nothing too mean and wretched to be passed by, if they could only gain a temporary advantage. For instance, I was not allowed to state that Sergeant QUINN was dead—a fact perfectly well known to all connected with the Prosecution—until out of this pauper's pauperdom I was driven to the expense of sending down to York to get a record of QUINN'S decease. In this spirit I have been met from the beginning. I shall not pass over things like this altogether, but shall probably glance at them as they arise with cursory contempt; indeed, they are not worthy of my notice, or, perhaps, of yours. To dissect, or to examine them, would be almost an insult to your understandings: but the Prosecution has resorted to, and has used them, as if they were of astounding import. You shall have some instances brought before you, and you may treat them with the scorn which they deserve. I myself would rather pass by those miserable, minor, mountebank details; but the Prosecution pretends to have profound faith in them, and though I despise, I cannot altogether omit to notice. I may appear, as before, prolix; who can speak on one subject for twenty days and not be so? But I hope and trust that every one of you will listen to me solely with the desire to investigate the whole truth and to do perfect justice, and that you will not overlook any source of information which may guide you to a right understanding. And what a comprehensive case we have before us. Even now, when it has been in my hands for many months, I can fully tell you that I feel myself unable to grapple with its magnitude. There are numerous portions of the Case, of which I may fail, through forgetfulness, to take the benefit; many things will probably escape my observation which you will be told that I have purposely avoided. In those matters I must claim your assistance and goodwill. Some of you have brought an intelligence and an amount of study to this investigation that is not every day seen. May I ask those of you who have so studied it to give your kindly assistance to your brother Jurors who have not devoted the same amount of time to the taking of notes and the record of memoranda?

Gentlemen, there is a remark to which I call your notice—I make it here, so that I may not forget it. The Witnesses for the Crown have, many of them, come from interested motives; the Family to preserve the estate from an outcast, from a vagabond and scoundrel as *they* think; the Jesuits to keep it in papal hands; some of the Wapping gentlemen because they have been paid. But *my* Witnesses come not for money—certainly not for bribes, or selfish considerations. Many of them have given their time, which is money, to this Defendant. Many have subscribed to his cause; many have paid their own expenses to this place, and gone perhaps without bread in order to give their honest testimony to the man. Some have left the side that paid, and for the sake of truth have gone unpaid; or have come to us, who cannot pay. Honour be unto them, for ever! And however this Case may terminate, I shall always be proud of the Witnesses whom I have called.

Gentlemen, I do not hesitate to say at the outset, after having given the most ample consideration to the whole of this prosecution, THAT IT IS THE WORST, THE WICKEDEST, AND THE MOST PROFLIGATE PUBLIC PROSECUTION THAT HAS DISGRACED THIS COUNTRY SINCE THE DAYS OF THE STUARTS; and I hope to establish that proposition with such clearness, that every one of you, and every one who reads the Report of this Trial in the light of the remarks which I am about to make, will be convinced of its absolute truth. He who contemplates the Trials in the days of old, is filled with wonder that our forefathers should have endured such dreadful judicial farces, usually ending in blood, as have from time to time disgraced the annals of our so-called Courts of Justice. We are astonished how it was that in those barbarous days when there were false and brutal Prosecutors, and as false and brutal Judges, our forefathers should have tolerated such abominations. We can see traced in the imperishable records of Parliament and Westminster Hall how some of the best, the bravest, the most noble men in the country, were done to death, or were persecuted to their utter ruin, by infamous Witnesses, by unprincipled Advocates, by wicked Judges, and Jurors without a conscience. We can see how, even as the curtain rose upon the first scene of these Trials, the animus of the wicked Judges who presided was made manifest. We can see in the browbeating of Witnesses, and in the perversion of their plainest words, in the bullying demeanour of those who should have been honest, and in the accursed sophistry of those who should have been impartial, but whose sole object was to destroy the unhappy prisoner or those who represented him, to what villainy our forefathers were subjected. Even now we cannot all understand how such things were tolerated. We are filled with amazement and indignation when we find COKE getting up in a public Court, and while he was conducting a public prosecution, designating so learned and great a man and such an eminent ornament of the country as Sir WALTER RALEIGH by the title of "Spider of Hell." It passed without reproof from the bench: but history has avenged itself upon COKE for his baseness. In those days also Counsel for the Crown used every art and artifice against the unhappy persons whom they prosecuted; not disdaining to overwhelm them even with personal abuse of the most furious kind. They were not content with their false Witnesses; but they poured forth and covered their victims with torrents of vilification. They used the same terms as have been used against this man: "Conspirator, Liar, Slanderer, Perjurer, and Villain." We are aghast at the shocking spectacle thus presented. Let us beware, Gentlemen, that in future days—days not perhaps far off—a similar comment to that which I have made be not applied to this very Prosecution also. Let each and all of us take heed that *we* may not be branded with the stigma of subservience, cowardice, venality or villainy. We may be quite certain that Time will pronounce its verdict upon all of us. If we escape the present, we shall not elude the future. Even the Seat of Justice will not escape the lightnings. We all know that the general fairness of our tribunals is admitted. In ordinary Trials between man and man, with SMITH as Plaintiff, and JONES as Defendant, true impartiality is found. The Jury have no reason whatever to lean to one side in preference to another: nor have the Judges any apparent wish to lead the Jury to the right hand or to the left. The verdicts pronounced in such Cases satisfy all but the losing party: and even he perhaps is satisfied in the long run. The worst Judges that ever lived;—even such wretches as TRESILIAN, SCROGGS or JEFFREYES—men who are a shame to our annals—even they in common Trials between man and man probably acted fairly. But it is in great Trials that our tribunals are tested. In Trials such as this there are influences—silent, secret, but powerful—

which are not present in those that take place from day to day: and we should strenuously guard against their force. These are sometimes political, and then they are of exceeding danger: sometimes they are influences of prejudice, of passion, of what is called "society"—that is, of a few people who have power, wealth, rank, and fashion at their back. Such influences appear only in Trials of vast importance; they existed in the ANNESLEY Trial, and the Jury and Judges resisted them nobly; they existed in the COCHRANE Trial, and both Jurymen and the Judge basely succumbed to their force. Hence, when we study some of the great Trials of bygone days, we can understand why every principle of Law and Justice was outraged; only then can we comprehend those black records which excite in us grief, and sorrow, and anger, and shame. And I do not despair of satisfying you, Gentlemen, that the whole procedure of this Prosecution, from its birth to (I hope) its shameful end, is as bad as any of the worst Prosecutions of former times.

Gentlemen, we live in a strange and troublous era; nor am I sorry that it is troublous. Anything is better than the repose of death, and dissolution, and decay. We live in an age of thought, an age of revolutions, produced as we suppose, by more active, fiery earnestness than that which burned or blazed in former times. We see around us thrones toppling, kingdoms rent asunder, old tribunals crumbling into ashes—nay, even the Triple Crown itself is in the dust. There is no Power that can last which has outlived public opinion; it cannot be sustained if public opinion will not support it. If dynasties fall, how will it be with the Seat of Justice, if Justice be not pure? The most sacred must pay heed to its honour. The fame of Justice is like CESAR's wife, and must not even be suspected. The purity of our Courts has hitherto been an Englishman's pride—long may the belief in that purity survive Exceptions there have been at times by evil men in evil days; and to those it may be my duty to refer. But I do so only as a warning and a guide. Far removed from us be the reproach which so often falls upon foreign tribunals. These, we say, are often guided by money, fashion, politics; but in England the notion does not popularly exist that there is one law for the Rich and another for the Poor; that partiality and partizanship prevail. Here we study only to do what is right; we put away opinions that we may have taken up, and are led only by a spirit of justice; and where a Jury is upright, even the worst Judge must fail in his designs.

I have called your attention to this for the reason that follows. There have been for some time covert attempts made in this country to destroy Trial by Jury—or to eliminate from it one of its chief features, the unanimous consent of twelve. We are told that the Scotch are a very wise people, and that in a Scotch Jury a majority prevails. The Scotch are a wise people. I admire the nation much; but I do not think that in this particular the Scotch are wise. At all events, I, for the present, am content to let the institution of ALFRED exist without change. There are those, however, who wish to get the narrow end of the wedge in. Some are for the Scottish form. Some wish to reduce the number of Jurymen to seven or five. Some desire to let Judges alone decide, as they generally do in the County Courts.

Gentlemen, *I* believe that a Jury of twelve men indifferently and honestly chosen is one of the best safeguards of our common freedom; and if the old form of Trial by Jury is weakened by any of those inroads to which I have alluded, I believe that we prepare the way for Despotism. And I call upon *you* to prove by your verdict in this Case that Trial by Jury, in its original form, is one of the grandest, because one of the most honest institutions of our country. Never before was it in the power of modern men to give a more sublime or convincing lesson to the masked enemies of our liberties than you have it now in your power to give. Demonstrate to the whole world that this is an institution which *cannot* lend itself to corruption; demonstrate it, so that our enemies who want to destroy Trial by Jury may be for ever covered with shame. Give them, I implore you, by your independence in this Case, a crushing lesson. If this Prosecution be—as I hope to prove—one of the greatest public crimes that has been attempted for years, perhaps for centuries—what a grand thing it will be for the friends of freedom to point out to its enemies that the result of this enquiry establishes by proof the sacred nature of Trial by Jury in its ancient integrity. Let that result—I mean your verdict—teach them that it is impossible now, whatever it may have been in former days, to pack twelve dishonest men into a box. Let them learn from it that Jurors of the nineteenth century are differently constituted from Jurors of the seventeenth or eighteenth; that they are high-minded, enlightened, and pure. One of our greatest advocates and orators, ERSKINE, when he was raised to his well-merited peerage (never having resorted to forgery as a means) took for the motto of his coat-of-arms, *Trial by Jury*; and the escutcheon of his descendants will bear for ever that glorious reminiscence of their sire. I call upon you to be worthy of that watchword.

The LORD CHIEF JUSTICE (*aside to* Mr. Justice LUSH, *but quite audibly to the Jury*): Did you ever hear anything like this?

Dr. KENEALY (*not noticing*): Gentlemen, Juries are entrusted by the law with the greatest responsibilities: the right to pronounce upon life, liberty, and property. You and I and all of us are therefore deeply interested in its maintenance. We heard from the late Prince CONSORT that our institutions are on their trial. Among these institutions, Trial by Jury is now at the bar. I hope and believe that it will come out with honour. "We must never deceive ourselves," says BURKE; "whatever does not stand with credit will not stand long." If Trial by Jury repudiates with repugnance, horror, and contempt, a Prosecution supported by such arts and means as the present, it will stand long, as it shall well deserve to stand; but if such nefarious things as have occurred in the course of this Prosecution are swallowed and stomached, then indeed Trial by Jury does not merit any longer our confidence or support. We must seek for justice through some other channel. But my desire is that it shall abide. Its great attribute is its integrity—its almost sacred impartiality. To that attribute I appeal. Let me remind you that you have all power; you are Kings; you are almost despotic while you are in that box. You are invested by your country with the greatest privileges. Oh, be careful of them, I beg of you. Your predecessors in the Jury-box have many of them guarded these privileges jealously and well; and so I pray may you. Feel, I entreat you, feel that you are bound by every obligation of Law, of Religion, and of the Public Weal, not to encourage prosecutions of this noxious description—prosecutions that strike at the very soul of all that we hold dear in the constitution. If this should succeed, it may be but the prelude to others of a like nature; but if you crush this serpent in the egg, you will probably save us all for the rest of our lives, from a repetition of the same offence.

The LORD CHIEF JUSTICE (*aside to* Mr. Justice LUSH, *but quite audibly to all the Jury*): This is an extraordinary fellow!

Dr. KENEALY (*not noticing*): Gentlemen, one of the highest maxims of the Temple of Justice, as it has been hitherto conducted in England, has been systematically set aside in this Prosecution. It is an ancient and honoured principle of our law, that every man who is put upon his Trial *shall be taken to be innocent until the contrary is proved.* But the Prosecution from the first have set aside this principle, and have acted precisely upon the reverse. They have acted as it were openly, avowedly, and almost defiantly on the idea that the Defendant must be taken to be guilty until he has proved himself to be innocent. They have wholly set at defiance that maxim of the Roman Law which have passed into our own: *Ei incumbit probatio, qui dicit non qui negat*; proof lies upon the accuser, not upon the accused. It is a presumption of law, says BEST, running through the whole law of England, that no person in the absence of criminative proof shall be supposed to have committed any violation of the criminal law. It is therefore a settled rule, in criminal cases, that the accused must be presumed to be innocent until proved to be guilty, and consequently that the onus of proving everything essential to the establishment of the charge against him lies on the Prosecution—a maxim founded on the most obvious principles of justice and policy. AMMIANUS MARCELLINUS relates that on one occasion when the Emperor JULIAN was sitting to administer justice, a Prosecutor seeing his Case about to fail, for want of proof, exclaimed, "What guilty man, most powerful CESAR, can ever be convicted if his denial alone suffices?" to which the Emperor readily rejoined, "What innocent man ever can be safe, if a mere accusation of guilt shall be sufficient?" A foregone conclusion of the Defendant's guilt seems to be the undercurrent which has guided every act and word of those who represent the Crown. But this is a wicked and illegal principle. I hope it will fail, and I call upon you to cause it to fail. The conduct of the Prosecution in this particular may have seemed to some of you to be based upon their absolute conviction that Right is on their side, and with this design in view they have probably used the tactics which I condemn. But surely you are not all led captive by this transparent device or trick. You are not *all* enmeshed in the fowler's net, so cunningly laid out to catch. If there be only *one* among you who is not so bird-limed, let *him* stand out, and protest against this shameful violation of justice. What says Lord HALE? "*If there be eleven agreed, and but one dissenting, who says he will rather die in prison, yet the verdict shall not be taken by eleven; no, nor yet the refuser fined or imprisoned; and therefore where such a verdict was taken by eleven, and the twelfth fined and imprisoned, it was upon great advice ruled the verdict was void; and the twelfth man delivered; and a new venue awarded.*" (41 Assiz. 11.) "*For men are not to be forced to give their verdict against their judgment.*" (2 Hale P. C. 297.) And in page 309, the same Chief Justice adds: "*It may be the twelfth was in the right; yet howsoever his conscience is not in this manner to be forced; and therefore former precedents of this kind have been disallowed.*"

The LORD CHIEF JUSTICE (*aside to* Mr. Justice LUSH, *but audibly to the Jury*): What do you think of all this?

Dr. KENEALY: Gentlemen, I have laid down a proposition which to some persons may appear what is called "strong." I have said that this is the worst and wickedest prosecution that has taken place in this country since the days of the STUARTS. In Ireland, in the bloody days of '98, and perhaps since, there may have been some approaching the present, but none that equalled it in badness. And this belief has grown on me every day with more and more force, since the first week that we assembled here. Better would it be that we should have no Courts, no Trials at all, than that they should be unjust. What hypocrisy is there in the world more odious than that of Justice dealing out injustice? The rampant position taken by the family and their representatives here, is an absolute libel on the administration of Criminal Justice in this kingdom. When first I had the honour

of addressing you, I was guarded in my language. Although I found fault with many things that had been done in the course of the Prosecution, still I particularly spared certain individuals. I did so, not out of any delicacy to them, for they deserved none: but I considered my Case sufficiently powerful without resorting to the necessity of impaling villainy upon the wheel. But how have I—how have my Witnesses been treated? I will tell you plainly, that I did not think it possible, in this Court, in this country, before the on-looking world, such outrages could have been perpetrated upon nearly all the Witnesses whom I produced as those enacted by the Counsel for the Prosecution. Once there was a time when I was willing to suppose that the Crown would act with an appearance of impartiality. I could not bring myself to believe that its procedure would be as bad as I was told it would be; nor could I ever have thought, if I had not seen it, that such misconduct could have been witnessed as occurred during the examination and cross-examination of the Witnesses for the Defence. All decency has been violated, all decorum has been set at naught. The Court has lost its character; insolence and low buffoonery have run riot and been rampant. Probably my forbearance may have induced this. Probably they thought that I should pause before I condemned such courses in the language which they deserved. Probably they imagined that they would be supported in their audacity by—but it is not for me to speculate further. Enough is it for me to know and feel that the insolence which they have shown has been a perfect mockery of all justice. It has brought its administration into contempt. It has held up Westminster Hall to public scorn. But let them not be over-bold. Let them not calculate too much on public apathy. I should have fancied that a little reflection on some portions of their own Case would have cowed them. I should have imagined that the men who relied on forgery and perjury, who flourished their false documents before us all—documents not simply fabricated, but backed also by false affidavits—I should have thought, I say, that the knowledge of such a blot upon their escutcheon would have produced some show of shame, of caution; some sense of decency, some diminution of the bearing of the swashbuckler and bully. But no—it was not so. They were as insolent as if their cause was faultless; as if their Witnesses and their papers were white as snow. I was amazed—I was almost confounded. Such audacity was incredible if it were narrated—but there it was. Had I been in their place, I own I could not have mustered face enough to do and say what they did and said. I should have taken a course precisely the reverse of Mr. HAWKINS and Serjeant PARRY. I should have felt that every eye was on the glass house in which I lived; and I should certainly not have invited a shower of stones upon my frail fabric. But not by perjury and forgery alone were they sustained; bribery has been added to their other virtues. What do you think of Captain OATES and his comfortable berth of £2 2s. a day, some £700 or £800 a year under the Admiralty? Is that bribery? What do you think of the promise to CHARLES ORTON of an annuity of £75 for the remainder of his days? Is that bribery?

The LORD CHIEF JUSTICE: That has not been proved, Dr. KENEALY.

Dr. KENEALY: My lord, I think there is *some* proof of it.

The LORD CHIEF JUSTICE: None whatever: none. The question was asked, but not answered. It was suggested that there had been a conversation between one of the Witnesses and CHARLES ORTON: but of course that was not admissible as evidence. If the evidence were not given, what CHARLES ORTON may have said to a Witness cannot, of course, be taken into account.

Dr. KENEALY: Gentlemen, my lord says it is not in evidence, and I stand corrected by my lord. But these are not solitary instances of corruption. I contend that giving large and unusual sums of money to Witnesses under the name of expenses and compensation for loss of time, is in effect an act of bribery.

The LORD CHIEF JUSTICE: What instances do you refer to?

Dr. KENEALY: There was £1,000 given to Mrs. MACALISTER.

The LORD CHIEF JUSTICE: That was observed upon on the last occasion.

Dr. KENEALY: There was £9,000 to GOSFORD.

The LORD CHIEF JUSTICE: £9,000 to GOSFORD? What proof have you got of that?

Dr. KENEALY: It is proved that he has not paid the money. I think there is much to show that he has been forgiven payment of it.

The LORD CHIEF JUSTICE: He has not got it to pay.

Dr. KENEALY: Precisely so. It is forgiven.

The LORD CHIEF JUSTICE: That could not be the case. It is part of a trust in the Court of Chancery; and if the trustees could not get the money, and did not try to do so, they would wholly fail to perform their duty.

Dr. KENEALY: Very likely. But who will compel them to fulfil it? And if they excuse GOSFORD the payment of that £9,000, because of the evidence he has given here in favour of the Family, are the Family likely to take steps against them for non-fulfilment of their duty?

The LORD CHIEF JUSTICE: All this is speculation.

Dr. KENEALY: GOSFORD has not paid it: and perhaps most of you will think he never can or will pay it; and that he never will be called upon by the Family to pay it—and I confess, *that* seems to me very like bribery. I may be wrong: but that is my notion. My lord says I am speculating. Am I? Am I in error when I suggest that with such defilements of their Case as these they ought to have been a little less rampant, a little less overbearing, a little less of the tyrant than we have beheld? They have conducted themselves throughout as if they embodied all the virtues under heaven; and as if my Witnesses embodied most of the vices that appertain to another and a totally opposite place. Over and over again have I protested against the way in which my Witnesses have been treated: over and over again I have had to complain that my Witnesses were deterred from coming into Court because of the manner in which those who went before them were addressed. You will see, when I come to make my comments on the cross-examination, what just reason I have to complain. The treatment that they met was unexampled and unjustifiable.

The LORD CHIEF JUSTICE (*angrily*): That is a reflection upon the Court which I will not permit to pass, and I take it upon myself to deny it emphatically. If I had seen any of your Witnesses ill-treated I should have considered it my bounden duty as a Judge to protect the Witness against such treatment. But I have seen nothing of the kind. I have heard no application on your part for protection. If any application had been made to the Court at the time, it would have been treated in a proper judicial manner. I consider the observation a serious reflection upon the Court, and I think that I ought to take the earliest opportunity of saying that I deny it. We have heard a good deal to-day that trenched upon the very limits, I won't say of propriety, but of endurance, *and why these charges should be made reflecting upon the conduct of the Judges I cannot conceive.*

Mr. Justice LUSH: I cannot help saying that I myself see not the slightest ground for such an insinuation.

Dr. KENEALY: I am sorry to hear your lordships say so; because I myself have the strongest feeling the other way.

The LORD CHIEF JUSTICE: *Then I can only say that you have failed entirely in your duty to your Client in not asking for the protection of the Court.*

Dr. KENEALY: I never could get its protection. I failed to get it almost from the beginning. On two or three, or more occasions, I protested against the manner in which Mr. HAWKINS treated my Witnesses, but it had no effect.

The LORD CHIEF JUSTICE: *I don't recollect an instance.* I say that I consider it the duty of the Judge to interfere to protect Witnesses wherever there appears to be *unnecessary* browbeating of Witnesses.

Dr. KENEALY (to the Jury): Gentlemen, I think I shall be able to substantiate what I say. I think I can point out instances upon which I shall take your judgment whether I am right or wrong. I am not telling you anything that I shall not be able to perform and shall not prove by reference to the records. When I call your attention to them I may probably ask you to bear in mind this interruption, and to decide for yourselves whether I have been justified in what I allege. And then even my lord himself may be induced to modify his present view. At all events I am saying nothing that has not chapter and verse. Having this feeling, therefore, very strongly upon my mind, I think you will say that in my opening address I exercised great forbearance. I *did* speak in strong language of certain Witnesses called for the Prosecution, but I gave numbers of them credit for being honest, although misled. I did not convey to you in my Speech any reflection upon the whole of the Case for the Crown; or suggest that the entire of the Witnesses were perjurers, deliberately coming into Court to swear what they knew to be false. I did not impute anything like a vast conspiracy. Yet these are the things that Mr. HAWKINS has thought it decent to do. He has not minced the matter in the least. He has made an exception of some three or four, in order, I suppose, to save appearances. But calculating rather too much on my previous forbearance he has exceeded all bounds, and can no longer expect it. The words of SHAKESPERE alone seem applicable here:—

> "This too much lenity
> And harmful pity must be laid aside;
> To whom do lions show their gentle looks;
> Not to the beast who would despoil their dens?" *

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* Mr. HAWKINS in this Case seems to come under that particular class of persons who are thus described in 'TAYLOR on Evidence':—

"Something occurs to rouse a suspicion against a particular party. Constables and police-officers are immediately on the alert, and with professional zeal, ransack every place and paper, and examine into every circumstance which can tend to establish, not his innocence but his guilt. Presuming him guilty from the first they are apt to consider his acquittal as a tacit reflection on their discrimination or skill, and with something like the feeling of a keen sportsman they determine, if possible, to bag their game. Innocent actions may thus be misinterpreted, and as men readily believe what they anxiously desire, facts the most harmless may be construed into strong confirmation of preconceived opinions. This proposition cannot be more strikingly illustrated than by referring to the credit that was given by the whole civilized world to the lying telegram which in October, 1854, announced the fall of Sebastopol. We do not say that this is frequently the case, nor do we intend to disparage the police. The feelings by which they are actuated are common to counsel, engineers, surveyors, medical men, antiquarians, and philosophers; indeed to all persons who first assume that a fact or system is true, and then seek for arguments to support and prove its truth."

Therefore I have determined as the Crown has gone upon that mode of procedure, as they have treated the whole or nearly the whole of my evidence as a systematic imposition in support of a confessed impostor, I am determined, I say, no longer to forbear in the utterance of my independent thoughts; and to lay aside that "lenity" of which the great poet spoke. I shall paint the Prosecution in such colours as present themselves to my mind. But I do not ask you to be led by mere words; always recollect, as I recollect myself, that I look at these things with the eye of an advocate, and that I may possibly be led away by feeling. Take all that, I say to you, subject to that consideration. Weigh it well and fairly judge it. If I have adopted an unwarrantable or exaggerated view of the insolence with which my Witnesses have been treated, and the peculiar mode of their cross-examination, you will very soon find it out, and probably by your manner you will let me know. If you think I am wrong I probably must be wrong. But until I find by the verdict that you give in this Case, that you deliberately think that the whole of the cross-examination by the Crown has been honest, fair, and right; that my Witnesses are what they are nearly all insinuated to be, false and perjured; and that the way in which the entire prosecution has been conducted recommends itself to your approval—until I find this I must still be permitted, with all respect, to adhere to the opinion which after the fullest and most careful consideration I have been forced to form.

What is the nature of the crime alleged against this man? A more wicked crime cannot be. If it is true—if he be guilty—it required none of the arts that have been used to bring him to justice and to condign punishment. Scorn, and contempt, and hatred, and flippancy, and farce need not have been called in to aid the Crown. The enormity of the guilt alone, without any extraneous aid, would have sufficed to ensure condemnation. A great Prosecution like this which pledges itself to bring clearly home to the delinquent the guilt of which he is accused, requires no adventitious support, no apparent scorn, no disbelief of manner in the cross-examination or treatment of the Witnesses. It ought to be above an upturned lip, or a comical grimace, or a clown's grin. It should rely only upon calm, quiet, judicial examination; an examination having for its object, not a temporary triumph over an inexperienced Witness, but the discovery of truth alone. Technically the charge is only for a misdemeanour; actually the crime is as serious as any for which a man may be arraigned at the Bar of his country; and being so serious, it ought to be treated seriously, and with a noble gravity. The offence is called perjury—but perjury for what? To rob the rightful heir of his large estate. That rightful heir, as it is said, is now an infant of tender years; the true, sole and lineal representative of an ancient family—the contemplated robbery of that child, is the crime of the Defendant if he be guilty. But it is not simply that wicked act. There is alleged to be in addition, a slander of the worst kind—the slander of Lady RADCLIFFE; a presumably innocent person, who is made—as it is declared—the victim, the unnecessary victim, of a foul, false and villainous charge advanced by this Defendant; there is, as well, subornation of perjury on a large scale, and a deeply-carried-out plot to persuade Witnesses either by subtlety, contrivance, or money, to swear to a whole series of untruths which the Defendant knows to be untruths. These are terrible accusations, nearly as terrible as murder itself; and when to this we add another aggravation of his presumed offences, which, though not technically charged in the indictment, is morally and even practically involved, namely, that he has gone deliberately about the country, falsely representing himself to all people as the real ROGER TICHBORNE, and obtaining large sums of money from them under as wicked pretences as were ever put forth by any man—nay more—when we bear in mind that this has gone on for a long period, and that a person conscious of all such guilt has kept the whole of England, Wales, and Scotland in agitation for five or six years, while advancing claims that he knew to be fictitious, and doing it with so much cunning that wherever he goes he finds some new Witnesses to come forward in support of his pretensions, and he does not hesitate to use them though he knows that they cannot speak truly—all these things, I say, add immensely to the gravity of the offence with which the Defendant is charged. And in proportion to its gravity should be the demeanour of the Prosecution. They should have supported these serious accusations by overwhelming proof—proof so absolute and conclusive as to need neither the grins, nor winks, nor nudges, nor grimaces, nor jokes, nor jests, nor indecencies to which you have been treated; and which were meant, I suppose, to carry conviction to your minds. Gentlemen, do I wrong you when I say that you will attach no importance to anything but proof? And if you quietly ask yourselves what real, actual, and positive *proof* the Crown has given here, you will find it much easier to ask the question than to receive an answer.

Gentlemen, one would have thought that there were already difficulties enough in this Case, in unravelling the tangled web of so many hundred Witnesses; but you have had added to your labours another and a collateral issue, namely: Whether the Witness who gave his evidence as LUIE, is SORENSEN or not? I should have thought that to find out whether the Claimant was TICHBORNE or not would have been labour enough for any set of Jurymen; but you have now an additional luxury thrust upon you by the course which Mr. HAWKINS took yesterday. Is LUIE, SORENSEN? Is SORENSEN, LUIE? Nice questions! You will have to pronounce upon them without hearing all the evidence *pro* and *con;* and I do not envy you your meditations in this respect. And here a thought incidentally occurs: Is this Court about to follow the course taken by Lord Chief Justice BOVILL? Is it going to send LUIE for Trial at once, without giving him the advantage of having the Witnesses against him examined in his presence before a magistrate, as was done in the Defendant's Case? Is that astounding and almost unparalleled proceeding——

The LORD CHIEF JUSTICE: I think the course I should recommend the adoption of in all such cases would be to bind the parties over to appear before a Magistrate, in order that the Case may be fully gone into. *That is the course which the experience of this Trial shows to be the more expedient course.* I do not say that with reference to the particular case of LUIE, but I am glad to say it in order to show what our opinion is; and the course we should pursue ourselves, I should recommend others to pursue.

Dr. KENEALY: I am glad to hear what my lord says: a contrary course leads to the injustice of which I have had so much to complain in this Case. But where, let me ask, are these Prosecutions to stop? If the Crown can get a verdict whenever it tries, who will be safe? We have had a floating idea, a sort of suspicion that another victim is to be Captain BROWN; because of some document which was thought to discredit the whole of his evidence.* But why on earth are we to stop with BROWN? If the Defendant were to be convicted, from the tone adopted towards nearly all the Witnesses for the Defence, the majority of these Witnesses ought to be prosecuted for perjury. For why should they prosecute only one or two; and allow the great body of false-swearers to escape? Why is Mr. WHALLEY to be let off? Why is Mr. BULPETT to go scot free? Is there any reason why Mr. BUDDULPH, the cousin, should not be prosecuted? Why is not Miss BRAINE to be arraigned? and BOGLE and so many hosts of others—are they all to go unpunished? I see no bar to a mighty battue. Mr. BIDDULPH must surely know whether the Defendant is his cousin or not. Would he have accepted a wandering scoundrel from Wapping as his relation and friend? Is Lady BURRARD to figure among the lot? or Colonel NORBURY, who exercised more than judicial care and caution in balancing his judgment? Where is it to stop? Are all my Witnesses to be, indeed, regarded as persons who have entered into a wicked conspiracy? You are asked, you are entreated, nay, you are almost commanded by Mr. HAWKINS to condemn this Defendant; and by so doing you necessarily brand with the stigma of deliberate falsehood an army of persons who are—I say it as an advocate—as guiltless of falsehood as the new-born babe of yesterday. Here is a complication of difficulties: We have some 200 Witnesses on one side, and, I think, some 260 on the other.

Mr. TAYLOR (Juryman): I think 259.

Dr. KENEALY: Thank you. Well, with these opposing numbers I contemplate with dread the slough of despond and despair in which you must find yourself. I think I shall show you that the evidence of the 250 is stronger in every respect than that of the 200; and is, indeed, absolutely overwhelming. We have not had so many lords and ladies on our side, thank God, or generals or captains, but we have had a body of Carabineers; and a finer collection of men never came before a Jury; men who gave their testimony in the most straightforward, honourable and convincing manner. If I were, as you, holding the scales of Justice, I would put one of these fine fellows in one scale, and a couple of noble lords and colonels in the other: and I believe the plain soldier would soon outweigh both the lord and the officer. I need only remind you that by the law you are bound in all Criminal Cases where a reasonable doubt exists to give the benefit of that doubt to the accused. And this is no indulgence or mercy on the part of the Jury, as some persons think or say. It is not as if a Jury received a Case good naturedly, and said, "We'll give the poor fellow the benefit of the doubt." The benefit of the doubt is an *absolute right*, a positive *legal right*, as strong, as powerful, as binding as any other legal right in the world.

The LORD CHIEF JUSTICE: They are to take the view which sound-thinking reasonable men ought to take: and you are quite right in saying that by the law of England a Defendant is *entitled* to the benefit of the doubt. But that is not a good-natured view merely. It is for the Prosecutor to make out the Case. If he leaves a doubt he has not proved his Case: and therefore, in consequence of that doubt, it would be for the Jury to acquit, and for no other reason.

Dr. KENEALY: I am glad that so many opportunities arise for these interlocutory observations from the Bench, which I am sure will make a profound impression on you. But my lord merely confirms what I have laid down. In all cases of doubt, the accused has as much right to the benefit of that doubt as the Sovereign has to the throne, or as you have to your freehold estates. What says MONTAIGNE upon the caution exercised in Courts of old. "And as there are always Cases in which doubt and uncertainty must prevail, I am not disposed to quarrel with the wisdom of the Areopagite Court, who, when they were once perplexed with a Cause which they could not unravel, ordered

* How this was realized appears in the 'Introduction,' page 309.

the parties to appear again in a hundred years."—*Aulus Gellius*, xii. 7. *Montaigne* 477. Let me call your attention to the language of Lord ERSKINE, in a Case tried before Lord KENYON, on an *ex-officio* information filed by the KING'S *Attorney-General against the* Earl of THANET *and others*. This was at Maidstone in 1798. "When the *law* is clear," says that great advocate, "and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*, above all upon evidence that is contradictory—when testimony is opposed to testimony, and Witness to Witness, in such confounding equality as that a Jury cannot with clearness arrive at the truth, I have a right to bring it to his lordship's recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his direction to Juries, but even to interpose his own opinion with the prosecuting Counsel. In a Civil Case, indeed, where one man asserts that to be his right or property which his opponent controverts, a Jury must give a verdict for the one or for the other, though the scales may appear to be equal. In such cases a Judge is frequently obliged to lament to Juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction; but I speak the language of his lordship and of all the Judges, when I say that *between the public and individuals* there can be no such race for judgment. Far different is the character of English justice;

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and there occurs to my mind at this moment a recent and memorable example. Whilst the attention of the House of Commons was attracted to the great cause of humanity in its proceedings upon the abolition of the slave trade, a Case was brought for the consideration of a Jury, arising out of the ill-treatment of a Negro in an African ship. The captain upon his oath denied the alleged cruelty, and a bill of indictment for perjury was found by a Grand Jury against him. I conducted that prosecution at Guildhall, and established the ill-treatment by several Witnesses; and although not one man who was in the ship at the time was called to contradict them, yet, on its only coming out, not from their admission, but upon the evidence for the Defendant, that they had held a different language in an alehouse at Bristol, Lord KENYON interposed on my rising to reply for the Crown. I had myself no doubt of the guilt of the Defendant, but his lordship, though without expressing that he himself entertained a different opinion, declared that the interests of the public never could be served by a conviction on such contradictory evidence. We ought not, he said, with such materials, to leap in the dark to the conclusion of guilt. I acquiesced, as it was my duty; and the Defendant, without any appeal to the Jury on the evidence, was acquitted. I should only wo ry you,

gentlemen, by a repetition of similar instances, which crowd into my memory at this moment. I am sure I could name above twenty in this very place upon proceedings for the obstruction of Officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the noble and learned lord not being able to detect perjury in the Defence, has uniformly held this language to Juries, and even to the Counsel for Prosecutions: "This is not a Case for conviction; the Defendant may be guilty, but there is not a sufficient preponderatiou in the evidence to pronounce a penal judgment."

"These are the maxims, Gentlemen, which have given to the British Courts of Justice their valne in the country, and with mankind. These are the maxims which have placed a guard around them in the opiuions and affections of the people."

Now what do we learn from this passage? This: that Lord KENYON, in cases where there was even conflicting evidence, so jealously regarded the old legal maxim as to the benefit of the doubt, that he did not wait for the verdict of the Jury, but himself interposed, and asked the Prosecutors whether they would go on? And it is a common thing at the Assizes for learned Judges to interfere and ask Counsel whether, under particular circumstances, they could reasonably call upon a Jury to convict?

The LORD CHIEF JUSTICE: Lord KENYON *was speaking of conflicting evidence by the same Witnesses, not by other Witnesses!!!*

Dr. KENEALY: So jealously guarded is this ancient maxim of law, that the Judges, without waiting for the verdict of the Jury, have themselves interrupted, and asked the Prosecuting Counsel whether he would proceed or not. This shows the high regard and caution which my lords on the Bench—I do not mean these lords present—exercise in Cases where the evidence is contradictory.

The LORD CHIEF JUSTICE: Do you say, that where there is a conflict of evidence the Judges ever take upon themselves to stop the Case for the Prosecution?

Dr. KENEALY: I have certainly seen it done.

Mr. Justice LUSH: *I never heard of it!*

The LORD CHIEF JUSTICE: If the Judge feels that there is no Case to go to the Jury on behalf of the Prosecution, he sometimes asks the Counsel for the Prosecution whether he can ask for a verdict on such evidence; but as to saying that where there is conflicting evidence, *the Judge takes upon himself to dictate to the Jury*,* I say that it is not done, and if it were it would expose the Judge to very serious animadversions. If the evidence for the Prosecution is not strong, and there is an overwhelming body of evidence on the other side, it is different. *I myself have asked the Counsel if he could upon the face of such evidence ask for a verdict.*† That occurs only in Cases where the evidence is weak on one side and very strong on the other. Even then, if the Counsel for the Prosecution were to say that he asked the Case to go to the Jury, the Judge could not prevent it.‡

Dr. KENEALY: Gentlemen, I submit that my lord bears out substantially what I am urging. It does happen sometimes as my Lord Chief Justice says. Now this being the law, if I put this Case upon its very lowest ground,—a ground which I am almost ashamed to take, but which it has been urged upon me that I should not desert—*Is this a Case free from doubt?* I respectfully submit that it is covered over from end to end with the greatest and gravest doubt. Even if we assume that considerable reliance should be placed upon the evidence for the Prosecution, nevertheless is not the whole matter wrapt in cloud and mystery? If no other ground existed therefore than this of a fair and reasonable doubt, I should demand, nay I should even claim your verdict. But when I shall have commented upon the evidence that I have to meet, and when I shall have shown its miserable weakness when contrasted with the strength of the evidence which I have produced, then indeed I should scorn to ask you for a verdict on the ground alone that you had a doubt. *I shall demand an acquittal as a matter of right.* I shall ask you to absolve this gentleman, not because you are doubtful of the Prosecution, but because you are convinced of his Defence. And this last is the basis on which I intend mainly to rely, though I will not of course abandon any maxim of law that may operate in my Client's favour.

And, LOW, gentlemen, a word or two as to the doubt. Is the Case so clearly and mathematically proved, as the Prosecution would have you believe? What do you say to Lady TICHBORNE?—to the mother's recognition of her son? The Crown itself was posed by this. Mr. HAWKINS was obliged to fall back upon the most unstable footing—"the poor Lady was crazed." That notion, upon which the other side so long trusted, was dispelled to the winds. My lord himself interposed, and said that it could no longer be maintained. The Prosecutors abandoned it; but not until they were almost forced to do so. They did it reluctantly, and with the worst possible grace—but how could they stand up against the evidence that I called?‖ Does any man now believe that Lady TICHBORNE was not as sound in mind as any Lady in this country? Does any one believe that the Prosecution did not well know that, from the outset? Yet knowing her to be sane, they pronounced that she was insane. Do these two facts not awaken the gravest doubt? For who can trust a Prosecution guilty of these? Does the recognition of the mother, who for months and months must have conversed with him upon the past—does that recognition excite no doubt? Is it not an overwhelming fact? But I will content myself with the language of the law, and simply ask in whom must it not awaken fair and reasonable doubt? In whom also must not the conduct of the Prosecution in seeking to dissolve that doubt by pretending to be true that which they must have known to be false, namely, that the lady had "a craze"—does not that, I say, add considerably to the force of the doubt, when the Crown is driven to such an unfair, I had almost said, such a wicked artifice? And what do you say to Mr. HOPKINS? Here was a shrewd old Lawyer who knew ROGER TICHBORNE perfectly well: his old correspondent: his host at Cahir, and in Paris: who had had legal dealings with him, and had conversed with him about deeds and documents; and I know not how many other matters—what do you think of this astute attorney receiving the Defendant into his house at Alresford, keeping him there for days, and testing him as he was bound to do, and no doubt did in every possible way, so that the family of his friend and client, Sir JAMES, should not be defiled by the introduction of an impostor, and its ancestral estates become the property of a cheat. Do you think that he would need more than one hour's conversation with him to detect his falsehood, if falsehood it were? Nay, do you think that he could have borne the ordeal of even one hour? I submit to each and all of you that it would be impossible. I wonder whether any of you Jurymen ever tried to "*come* the old soldier" over an old Lawyer? If you did, where did you find yourself? Where would you have been? You must have been turned inside out in less than twenty minutes. Bold would be the man who made the attempt; but marvellous would he be who succeeded in it. Yet you hear the evidence of Mr. HENRY SEYMOUR, who gave an account of the interview with Mr. HOPKINS, who described him as being moved into excitement even by the doubt expressed of his reality, and made repeated asseverations that he was the true man.* Does not that fact excite doubt? And what do you say to Mr. BIDDULPH? You saw and heard that gentleman. You heard him examined: you heard his jeering and insolent cross-examination: the allusions to the champagne, and such balderdash. He is convinced that this gentleman is his cousin. Mr. HAWKINS has not shaken him, nor weakened his conviction. Is Mr. BIDDULPH in his senses? Is he a Witness of truth? If he be both, does his evidence awaken doubt?† And what do you say to Miss BRAINE? Did any lady ever give evidence in a more clear, simple, truthful, or dignified manner than Miss BRAINE? Do you think that this Wapping ruffian—as my client is pretended to be—could have persuaded Miss BRAINE, firstly, that he was a gentleman? Secondly, that he was her old acquaintance?‡ No—her woman's instinct would have detected and exposed him in five minutes. Probably none of us ever saw a better or a nobler specimen of womankind than Miss BRAINE. Does her evidence beget doubt? And what do you say to BOGLE?‖ Does any man living believe that BOGLE is a liar and scoundrel? Does the Prosecution itself believe that he has lent himself to fraud? Impossible. They do not, they cannot believe it. Does any one fancy that BOGLE does not in his inmost mind and soul thoroughly believe that this is his old master and companion, I had almost said friend, ROGER TICHBORNE? Can it for a moment be suggested by any sane or honest person that BOGLE would lend himself to the fraud and wickedness which my Client is charged with concocting? Do all these considerations beget no grave doubt? If I had only the evidence of the Mother, of HOPKINS, and BIDDULPH, and Miss BRAINE, and BOGLE, without the hundred other Witnesses whom I called—that evidence alone, I submit, would be enough to raise this doubt. As it is, the entire is irresistible in that respect, and I know not how it can be resisted. I own that I feel curious as to the course that will be pursued when the reply comes. Perhaps the old and bold line will be taken, and we shall hear that they are all perjurers; perhaps the more wily plan will be adopted, and you will be told to regard them with compassion, for they have been deceived and deluded, and are persons of weak understanding. Their hearts are not in fault, poor souls, but their intellect is not sound, and so they have spoken as they have! To me, however, they exhibited no sign of mental incapacity. Some of them wrestled with the leader of this Prosecution, and, as far as I could see, they were not worsted in the encounter. Mr. BIDDULPH, in my judgment, had the best of the battle. I think, too, and I am not alone in my opinion, that Miss BRAINE conquered him completely. BOGLE was under cross-examination for a day and a-half, and his every answer carried joy to my heart, because in each was seen the evidence of truth. He also proved to be in the full possession of intellectual vigour. Sometimes, indeed, HAWKINS had a victory over BOGLE, and sometimes BOGLE beat HAWKINS. On the whole, however, I think the laurels rested upon BOGLE's head. He worsted Mr. HAWKINS, and I will tell you why. It was because, armed with truth and honesty, he *could* not be beaten. Although seventy years of age,

* No such thing was said or suggested.

† This was exactly what Dr. KENEALY had suggested, and which Mr. Justice LUSH most shamelessly denied.

‡ A pretty strong hint to Mr. HAWKINS.

‖ See *Trial*, Vol. VI., page 227.

* See Mr. HENRY SEYMOUR'S evidence, Vol. II., page 143.

† See Mr. BIDDULPH'S evidence, Vol. V., pp. 279-288.

‡ See Miss BRAINE'S evidence, Vol. V., pp. 294-308.

‖ See BOGLE'S evidence, Vol. V. pp. 95-136.

these qualities stood by him in his need, and made him more than a match for the antagonist with whom he was engaged.

Now I take it almost for granted, that the evidence of those persons must have raised doubts in your minds. I suppose it has not raised doubt in the mind of Mr. HAWKINS, or else, possibly, he would have withdrawn the Prosecution. Because if there *is* a doubt, it is the duty of *honourable* Counsel, even though they prosecute with ardour, to interfere, and to recede with honour, rather than be beaten and retire with shame. Let me concede that the Defendant has acted on more than one occasion with folly. That he has done many things which at first sight may appear to be evidences of guilt, I never have disputed. These things may at at one time have influenced the Counsel for the Prosecution. But are not many of them explained and satisfactorily cleared up? Are there not numerous reasons why the Prosecutors themselves may be convinced now? And is it not better to be on the side of clemency rather than of unrelenting hostility? After the testimony of so many Witnesses, would there have been anything strauge if the Counsel for the Crown had taken that course which is sometimes done on the interposition of a Judge? Mr. HAWKINS might, when he heard this vast volume of evidence, have got up and withdrawn from the further prosecution of this Case in a manner which would have conferred honour upon the Crown itself.

The LORD CHIEF JUSTICE: *He could not have done that without the leave and sanction of the Court*, when the evidence had been heard on both sides, and *I should have said, this was a proper Case for the evidence on both sides to go to a Jury.* When a Case has been heard out, and the evidence on one side is overwhelmingly strong, a learned Judge may ask Counsel whether he can expect a verdict, but the Judge cannot call upon him to withdraw. *I should not have allowed it in this Case*,* and I have no doubt that my learned brethren would have said the same thing.

Mr. Justice LUSH: I should have entirely agreed with my lord, and for another reason. I think it is highly desirable that *there should be a final end of this Case*, and that it should not go off by withdrawal of the proceedings.

Dr. KENEALY: A final end of this Case could only be attained by the conviction of my Client in this Court. I am sure your lordship does not mean that.

(Mr. Justice LUSH *shook his head.*)

Dr. KENEALY: It is only by his being found guilty that his claims could come to an end.

The LORD CHIEF JUSTICE: Conviction need not accomplish the "final end." It might be always possible to bring a new ejectment.

Dr. KENEALY: Surely not with any reasonable hope or chance, if the Defendant were in Newgate, convicted of perjury.

Mr. Justice LUSH: I should think it a most calamitous thing, if there were any end except by a verdict †

Dr. KENEALY: The "final end" which your lordship aims at or desires, could only be accomplished by a verdict of Guilty.

Mr. Justice LUSH: I did not say that.

Dr. KENEALY: I shall probably have to direct the attention of the Jury to this matter, because there have been at least two articles in two great newspapers directing them above all things to come to an unanimous verdict which would settle the Case for ever; by which I presume these papers, which are hostile, meant to imply a verdict of Guilty. This, of course, is not what Mr. Justice LUSH meant by a "final end"—though there are people who might think so.

Mr. Justice LUSH: I had no such idea.

Dr. KENEALY: I believe your lordship had not; but a great many persons might suppose it.

Mr. Justice LUSH: I am glad you have caused this explanation.

Dr. KENEALY: I think we may rejoice with my lord, that the "final end," as now explained, does not necessarily imply an adverse verdict. Yet, Gentlemen, you must have all of you seen—for some of you read the papers every day in the box—that the "final end" has been discussed by two powerful journals. When the Case for the Prosecution closed, much to the surprise of everybody, two leading articles appeared in the *Times* and *Daily News*, which seemed to have been inspired under some private information which they had received to the effect that the Jury even then were not likely to agree. They both said that no greater calamity could befall the country than a separation without a verdict; and they recommended the Jury to come to such a conclusion as would bring the Case to a "final end." From the known hostility of these two journals to the Cause of my Client, I had little doubt that in *their* view a "final end" meant a verdict of Guilty. I considered at the time whether it was not my duty to bring the matter before the Court, although I never got much encouragement when I did so. Eventually I abandoned the idea, trusting that the Jury would not be influenced by either.

Mr. Justice MELLOR: There is but one duty for the Jury, and that is, to form an honest conviction from the effect of the evidence, whatever that may be. They have to consider all the evidence. And on this consideration, whether it makes the "final end" or not, their single and sole duty is to form their opinion upon the evidence.

* Those indiscreet admissions proved that the Judges were resolved under any circumstances not to allow the Prosecution to withdraw, but to secure the conviction of TICHBORNE if they could.

† This was a plain hint to the Jury that they must not disagree.

Dr. KENEALY: Gentlemen, I am not sorry for these discussions, though they unfortunately at times interfere and stop the direct current of one's argument or thought. I have done with all allusions to the benefit of the doubt. Probably I should have said a little more had not this interruption occurred. But let it go. Allow me now to put before you what I regard as strong proof in the Defendant's favour—I mean his public conduct during the last five or six years that he has been in England. I do not here make any reference to the public feeling on his behalf, because my lord has warned me that I must make no such allusions. But what I mean is this: that it is hardly possible to suppose a man, who is an impostor, showing himself all over the country to thousands of his countrymen, and challenging open disproof of his claims. If he had been ORTON would he have ventured upon this? And that is an additional reason for "doubt," if, indeed, it be not conclusive evidence of his identity. No impostor would have dared to go down to Alresford, and live there among so many old friends and neighbours as this gentleman did. ARTHUR ORTON, the Wapping butcher, or pony driver, never could have done it. He dare not. This would have been his absolute and immediate ruin. This, to my mind, argues a conscious innocence which could exist nowhere but in the true man. A guilty man is ever fearful. Conscience doth, indeed, make cowards of us all. This man has acted precisely as the real ROGER would have acted; in a manner that no false pretender could ever have brought himself to act. When his own family turned upon and spat upon him, he went about the whole kingdom and claimed kindred with his fellow-countrymen in the mass. When his mother died and his resources ceased, he asked the people to give him support, and they did so. This he has done for a long period. His courage and his coolness are strong evidence that he is the man; his bearing in Court before you all could hardly co-exist with conscious guilt. You have witnessed his perfect equanimity; no man seemed more to relish the jokes which Mr. HAWKINS was perpetually discharging at both himself and his Case. MARY ANN LODER did not move him, nor that wretched Siren disturb him in the least. To neither did he ever show the least sign of hostility, though both swore as hard as they were able against him. On the contrary, kindness never left his countenance, but it was a melancholy kindness, as if he deeply commiserated their condition. When he heard himself denounced in the strongest language of abuse, he never lost his good temper. During the whole of this protracted Trial you have never seen him exhibit a single token of that rough, coarse, and ruffianly spirit which was the characteristic of ORTON. Even when most tried, he never has been moved, and I might apply to him the language of the ancient Roman:—

> "Non vultus instantis tyranni
> Mente quatit solidâ."

The LORD CHIEF JUSTICE: Who is the *tyrannus?*

Dr. KENEALY: My lord, he is not far off. (Laughter.) Gentlemen, this man has always been unmoved and calm under the most trying circumstances. He appears to have been borne up by conscious innocence, and I claim that calmness as evidence of his reality. This conscious innocence and conduct, in harmony with that consciousness, have always been regarded as strongly negativing any strong appearances of guilt. CICERO, in his *Oration for Roscius*, relates a case in which the just conclusion drawn from a single circumstance of this kind saved two young men from an ignominious death.—

"Not many years ago they say that TITUS CLŒLIUS, a citizen of Terracina, a well-known man, when having supped he had retired to rest in the same room with his two youthful sons, was found in the morning with his throat cut. When no servant could be found on whom, nor any free man on whom suspicion of the deed could be fixed, and his two sons of that age lying near him said that they did not even know what had been done, the sons were accused of the parricide. What followed? It was indeed a suspicious business, that neither of them was aware of it, and that some one had ventured to introduce himself into that chamber, especially at that time when two young men were in the same place, who might easily have heard the noise and defended him. Moreover, there was no one on whom suspicion of the deed could fall. Still, as it was plain to the Judges that they were found sleeping with the door open, the young men were acquitted and released from all suspicion. For no one thought there was anyone, when he had violated all Divine and human laws by a nefarious crime, could immediately go to sleep, because they who have committed such a crime not only cannot rest free from care, but cannot even breathe free from fear."

Gentlemen, that is a most remarkable Case. I believe that any sensible man would come to the same conclusion as the Roman Jury did. On the same reasoning, I ask now, Whether the conduct of this gentleman, since he came to England, has not been such as to indicate in all things that consciousness of his truth, which always is to be found in only true men?

[The Court adjourned.]

On re-assembling, Dr. KENEALY resumed his address:—

Gentlemen: I was alluding, when we adjourned, to the conduct of the Defendant in showing himself through all parts of the country and to all classes, as a strong proof—in my humble judgment almost a conclusive proof—that he must be ROGER TICHBORNE. I will now call your attention to another phase of his procedure, as it seems to me equally powerful on that point.

I do not know whether any of you have read the opening address of his Counsel, Serjeant BALLANTINE, in the Civil Trial, in which he pointed out the probable consequences to the Defendant if he failed to prove that he was the man whom he represented himself to be. He used these words in the hearing of his client: "Sir ROGER TICHBORNE knows right well the opinion of those associated with me, and my own opinion, that it is impossible to escape the ordeal if he be not the man. He knows that, and he sits here, and he will stand before you knowing that full well; and if he be the liar and impostor that he has been called, his imposture will be defeated, and it is impossible to feel a doubt that a life of labour, confinement, and misery will be the termination of an attempt that no sane man could expect would succeed in the presence of such a tribunal, and subject to such a test. Sir ROGER TICHBORNE knows that right well; and early in this Case, when I was first consulted in it, he learned the stake for which he was playing, and the stake which he was laying down to play; and that man is now ready to go into the box before you, and to invite the cross-examination and inquiry which must apply the crucial test to his evidence. He has no fear and no alarm. As far as I can tell, he has perfect self-confidence, and he knows right well the frightful issue that he has invited by placing himself in the position in which he now is." Such was the warning of his Counsel at the first Trial. He knew perfectly well, therefore, from the first, that he had to expect the severest punishment of the law if he were proved to be an impostor. He could anticipate no mercy; and, indeed, his own conscience must have told him, if he were false, that he deserved none, and that fifteen years' penal servitude *—if it could be legally imposed—would not do more than avenge outraged Justice. Well! he is committed to Newgate by Chief Justice BOVILL. A shout of execration, a yell of triumph, was raised by those best possible instructors of the British nation, the Press. The war-whoop was, He is a great impostor, and there is an end of his Case for ever. Now, let us consider what an impostor would probably have done when the opportunity was given. Certain simple-minded individuals, Lord RIVERS, Mr. ONSLOW, and others, did not sail exactly with the newspaper current; and they befriended and bailed him out of Newgate. What would ARTHUR ORTON have done when he was thus at large? He would probably have said to himself, "The game is played out; I have lost it, and must look to myself. I shall go back to Australia and hide myself in the wilds. I will ensconce myself in my old haunts, and be made welcome by my old companions. What do I care for these noblemen and gentlemen who have come forward and laid themselves under heavy obligations for my appearance?" Thus ORTON would have reasoned; thus in all likelihood ORTON would have acted, and would have fled. I may be told that he would be brought back. I am not quite sure of that. I am not very certain that the persons who are the main movers of this Prosecution would have been extremely anxious to bring him back to this country.

The LORD CHIEF JUSTICE: *I thought that the Crown took up the Prosecution from the time of his commitment.* †

Dr. KENEALY: You think so?

The LORD CHIEF JUSTICE: When the persons who, you say, are the prime movers of this Prosecution *would have had nothing to do with it!!* It depended on the law officers of the Crown.

Mr. HAWKINS: The Attorney-General pledged himself to the Lord Chief Justice of the Common Pleas to take up the Prosecution.

Dr. KENEALY: He did; but who conducts the Prosecution here? and who has really conducted it throughout? Mr. BOWKER! We see him and his son, and his clerks every day in Court, with their boxes and their bags, all the way from Winchester, crammed with the documents in the Case. We see Mr. CULLINGTON here morning noon and night. We see the whole staff of the Family present. The Solicitor for the Treasury nominally prosecutes, but the real Solicitor is BOWKER. Therefore, I contend, I am right in what I said, and that the main movers in this matter would probably have been glad to have thus evaded this present ordeal. There is such a thing as catching a Tartar. Probably they may have felt this. If this man had gone away, and they had followed him and caught him in Australia, they would have thought it was a Tartar, and would have rather let him alone. I am not in the secrets of the Cabinet, but the GLADSTONE Cabinet has exercised a strong determination in this Case to press what they call "justice" to an extremity. In ordinary Prosecutions we do not see a couple of Cabinet Ministers involved, one of them rewarding the famous Captain OATES with £700 a year, the other getting into the witness-box to swear what we all knew to be untrue. I do not say that Mr. CHILDERS came here wilfully to swear what he knew to be false, but he undoubtedly has not sworn the truth, or anything like the truth, in regard to the gold-fever and the ship desertion in Australia. I spared him when I was opening my Case; but I now say that he has sworn recklessly and wantonly, and that he has sworn what is not true. Consider these things; ask yourselves do you like them? I repeat, therefore, that if the Defendant had abscouded and left his bail in the lurch, the Prosecutors would not have followed him. They would have let the matter rest: they would have been glad to escape from a difficulty into which they rashly plunged, and which has not very much raised them in popular favour. And if the Defendant were the artful person he is said to be, he might have reasoned in this manner: "I shall go away; that will be a virtual abandonment of my claim; the matter will pass into oblivion; the Government will be glad to get rid of me; so my bail only will suffer." That is the thought which would have entered into the mind of a ruffian; but never into that of the gentleman whom I now represent. He could have had no difficulty in withdrawing—he might have gone to some land with which we have no extradition treaty. But the consciousness of right and innocence supported him here; he remained in a defiant attitude, and said, "I am the man. I will face any tribunal of my countrymen. I know my Cause, and I know that they will do me justice. I have had a sort of a Trial, a mockery and a sham. I called 90 Witnesses whose evidence was not shaken; and my adversaries called thirteen or fourteen. I do not accept that as a fair Trial. *Let me have twelve honest men, and a Judge who has formed no foregone conclusion, and I shall be safe.*" Well! he is here: fearlessly. He has had more than a year, during which he might have fled. The Prosecutors themselves seem, as it were, as if they readily opened the outposts for his escape. They delayed the Trial; they put it off for more than a year.

Mr. Justice LUSH: Not this Trial!

Dr. KENEALY: Yes! this Trial. It has been hanging on for more than twelve months.

Mr. Justice LUSH: *There was no application for postponement.*

Dr. KENEALY: Nobody said there was.

Mr. Justice LUSH: *I think it was put off in consequence of extraordinary circumstances;* and not for the purpose of getting up evidence. The application for the Trial at Bar necessarily delayed it, and it was thought better to let it go over the Spring Assizes. The commissions abroad were for the purposes of the Civil Trial.

Dr. KENEALY: One of the reasons given why this Case could not be tried when it ought to be, and why it was deferred, was, that they were getting Witnesses from all parts of the earth.

The LORD CHIEF JUSTICE: It was on the proposal to remove the indictment into this Court, and when some suggestion was made of the hardship upon the Defendant, occasioned by the delay, that something was said about bringing Witnesses here from a great distance. I think also something of the kind occurred on the question of bail. But there never was any application made to postpone the Trial: nor was any direction given to postpone it, on the ground that the Witnesses were not here.

Dr. KENEALY: I never said or intimated anything of the sort. It matters little to my argument, why or wherefore the postponement happened. Sufficient for me is it, that there was a very long period during which this man, if he had been guilty, might have fled: and the fact that he did not attempt it is some proof of his innocence. If he were ORTON, he might have calculated safely on two contingencies: the connivance of the Government and the Family at his escape: and the many chances in his favour that he might remain in his old haunts without detection. But the Defendant is here. He seems to bear the old motto of RICHARD of the Lion-heart; *Dieu et mon droit*—God and my Right. He says that it is impossible for any twelve of his countrymen to find him to be other than ROGER TICHBORNE. If he be ROGER TICHBORNE I can understand this conviction: but how could ORTON ever bring himself to it? A man may say, they can never prove me to be a woman—so this man says, they can never satisfy any sane person that I am ORTON. He had heard his danger pointed out by his own Counsel, as well as by the Attorney-General in that long, dismal, and most dreary speech—one of the most remarkable specimens of sophistry in the world. That alone would have infused terror into him, if he were guilty. He would have felt, "I never can escape the consequences of this crime." Is not guilt always tremulous? We find the violators of law cowering like vermin in the holes of the earth; they go not into the light of day. It is well for the world that the wicked are not bold. If they were, and if they had confidence in each other, they might carry all before them. Only fancy what a combination of all the criminals in London could do if they had but faith in themselves or in each other! But they have no faith; they have no courage; they hide themselves like wild beasts. The Defendant has never yet shrunk from the gaze of his fellow-countrymen. Why do all those who come in contact with him remain stedfast in his cause? Do we live in an age of dupes and fools? A man may be blinded by cupidity in commercial transactions. But what on earth have Lord RIVERS, or ONSLOW, or BULPETT, or BIDDULPH, to bind them to this man's cause, if they be not persuaded of its innate essential verity? Cupidity cannot be alleged, nor self-interest of any kind. On the contrary, by adhering to this man they obtain for themselves the ridicule of all the drawing-rooms, and the sarcasm of all the fine ladies in the land. They get what is called "the key of the street." For I don't disguise from you that the Defendant is ARTHUR ORTON in almost every drawing-room, while he is ROGER TICHBORNE throughout all England. But the drawing-

* This was an allusion to what Sir R. PEEL informed Mr. WHALLEY was the resolution to which the Judges had come early in May, 1873, as set forth in *Trial*, Vol. I. pp. 82-86.

† Yes! but COCKBURN well knew that practically the Prosecution remained in BOWKER'S hands.

room is a power not to be despised in this country. It is not pleasant to be accosted by young ladies, and mockingly asked: "Do *you* believe in ARTHUR ORTON? Is it possible that *you* have faith in ARTHUR?" But Mr. ONSLOW and the others whom I have named, have bravely set themselves against influences of this kind, and have never wavered in their faith. How is this to be accounted for? Only by the all-confirming, all-convincing force of Truth; which, under whatever circumstances it may be placed, will ever hold its own, and carry the day. There are no better judges of what a gentleman's mien and manners are and should be than some of the Witnesses whom I have put before you. Men feel almost instinctively when they are in the presence of a gentleman. There is an undefinable and invisible halo around him which distinguishes him from a clown or a vulgar man. Five minutes' conversation, or even less, and you discover who he is. Mind, I do not put the Defendant before you as a perfect specimen of what an English gentleman should be. On the contrary, I say and think with regret, that he is a fallen and degraded gentleman; he has sullied himself with base associates. But the very depth of the degradation into which he has plunged during his mad folly, shows how strong was the impress of the gentleman originally upon him, when now so many fair traces of it remain. All that pure essence has not been obliterated; in all matters you find the moulding of the gentleman still. Has anyone seen him walk along Westminster Hall? There is the perfect gait of the gentleman. In all things, too, he has shown that courage which is the essential mark of a true gentleman. He must have often said to himself: "ARUNDEL of Wardour, and Lord DORMER, and many of the Catholic and the Protestant families in the land are against me: and I have been denounced in the Press, and even in the House of Commons, while I was awaiting my Trial, as an impostor; but I fear them not. I will remain and fight them." He does not quail before the Jesuit priests who are so powerful in this land: or before the fine ladies of the Mrs. HIBBERT school. Could anything but right support him under present circumstances? Therefore it is that so many people sympathise with and sustain him. They see that he is fighting an unequal battle, against the most terrible odds, and the most unrelenting foes; and they see that he never once has flinched. His relations are ashamed of him, because he has not kept up the family traditions; he has not bred in and in. He has been a wanderer and a prodigal—almost an outcast. His own house is open to strangers, and is closed against him. Newgate is the home to which his relations send him. Nevertheless, he says, I will maintain my right even though they kill me. To those dear relations and friends, he may say, in sacred language, "*I was hungry, and ye gave me no meat. I was thirsty, and ye gave me no drink. I was a wanderer, and ye took me not in. I was naked, and ye clothed me not; and in prison, and ye visited me not.*" He may say all this with perfect truth, and the only answer that his family can give is, "You have disgraced us, and we have cut you off." That may satisfy them—but can it satisfy you, his Jury? If he be the eldest son of that lady, who died a weeping martyr to his cause—and who can judge of a son like a mother?—you will not be prepared to join in his condemnation because his relations may not like him. You can send him back to his ancestral home, purified by the bitter experience he has had, able to atone for the past by his future life. You may bring around him once again all these persons who have been swearing so terribly against him, and force them to acknowledge with tears of contrition the miserable part they hitherto had played. Never again will you have such a splendid opportunity presented of reinstating a fallen man, and raising him up to his former dignity.

Gentlemen, there is another observation, connected with this man's committal to Newgate, and subsequent prosecution, which may be worth consideration. You recollect the circumstances under which he was committed. At that time there was hardly a person in the country who did not believe that he was fallen and crushed, and that his Cause was hopeless. All his money was gone; he had been robbed by his lawyers of £35,000 which had been raised to support his Cause. No one fancied that he could ever emerge from his sea of difficulties. Whether considerations of that kind guided the conduct pursued by his relations towards him I know not: but the Press never ceased to represent that his Cause was gone; that he was an almost proved impostor; that no sane man would be his bail; and that it would be well to let him rot and be forgotten in Newgate. His own blood relations might have thought, "Now we have him, and we shall have his estates. They are worth at present £25,000 a year: in less than twenty years it will double itself. The game is worth any money that it may cost us." Therefore they resisted bail: they cross-examined his bailmen, Lord RIVERS and others, as if they were common thieves, destitute of money, or of character.* They did all they could to keep him in durance until the Trial came on; that is, they sought to give an unconvicted man twelve or thirteen months' imprisonment before Trial. Does not all this demonstrate a terrible animus? And now, if under the influence of evidence coloured and guided by that animus, you should convict him, they will have his estates for ever.

The LORD CHIEF JUSTICE: Who are "They?"

Dr. KENEALY: His enemies.

The LORD CHIEF JUSTICE: What enemies? I called your attention to that once before. The estates are in the hands of Trustees * appointed by the Court for the benefit of the infant heir. You say his enemies have got possession of his estates.

Dr. KENEALY: I said; Convict him and they will get possession.

The LORD CHIEF JUSTICE: You said a few minutes ago, his enemies have got possession of his estates.

Dr. KENEALY: Excuse me, my lord, I think I did not say so. But if I did, I shall put it, if it pleases you better, in the future tense; Convict him, and we shall get possession of his estates.

The LORD CHIEF JUSTICE: Not unless the heir fails: and even then it is very remote.

Dr. KENEALY: Gentlemen, if I had sacerdotal power, and I wanted to get a man's estates, I would educate the heir, so that I should be ever his master, and he should for ever be my servant. And in this country, under the law of mortmain, I should be much safer in having the heir and owner as my humble slave than if I laboured to get his estates for myself. All that I should have to do would be to bring him up in certain notions and ideas, and in my leading-strings; and I should have nearly as full and ample possession of his property as if I were its legal owner. And I do not at all hesitate to suggest to you that such a consummation as that may have been in the mind of Mr. WHALLEY—who is supposed to know a great deal about the Jesuits—when in the Witness-box he described this Prosecution as a popish plot. There may be great though unseen powers behind this Prosecution, who are combined against this man for their own purposes. The infant is seven or eight years old; and may be trained as they think fit; but here is a grown man, who has outburst their chains. And in such a contingency, their calculation would go far beyond the present. They might say: We are speculating for £50,000 a year, some twenty years hence. These things have occurred before; and may be occurring again. They are matters which I cannot prove to-day. Unfortunately they seldom can be proved in a Court of Justice. But judge calmly. Ask yourselves why there are so many Jesuit priests mixed up in this Case? and why they gave their evidence, not in a manner indicative of integrity? not in a way calculated to inspire confidence?

Mr. TAYLOR (Juror): Is not the Defendant a Roman Catholic?

Dr. KENEALY: I am afraid he is not a very good one. I am afraid that what was said to GIBBES in 1866 may have flown to others. The Jesuits have little birds everywhere.

The LORD CHIEF JUSTICE: *It was never heard of till* Mr. GIBBES *said something about it in the witness-box*; † it never transpired at the former Trial; and, so far as I remember, was never mentioned.

Dr. KENEALY: Your lordship is now giving evidence. Yet you may remember that it was elicited by me from Mr. GIBBES, through the means of a written paper, *prepared for the last Trial*, under his dictation, and from which paper I cross-examined him. And you may bear in mind that Mr. GIBBES shewed a perfect recollection of the contents of that paper, for he said to me, "Some part of what you are now reading is between inverted commas."‡ This shows that Mr. GIBBES or some one else had mentioned or dictated these facts years ago.

The LORD CHIEF JUSTICE: I read the former Trial very attentively, and I do not remember anything of it.

Dr. KENEALY: I never said that it came out at the former Trial. GIBBES was not a Witness at that Trial. But it is clear from that paper that the facts were known at that time; and if they were known to any, why should not the Jesuits have known them?

The LORD CHIEF JUSTICE: I do not understand how what passed in Australia between GIBBES and the Defendant could get here; and I am not aware of its having been known till GIBBES stated it here.

Dr. KENEALY: It is clear that it was known, for it was in that paper, which was ready to be used at the last Trial, if GIBBES had presented himself for examination. Nevertheless, even if this were not so, a little bird might have brought the news to England that this Defendant was not disposed to be as liberal as his predecessors.

The LORD CHIEF JUSTICE: The statement was, I think, that his predecessors had given the Church three per cent.

Dr. KENEALY: That statement was never contradicted except by GOSFORD.

The LORD CHIEF JUSTICE: We must take the whole thing. He said that his predecessors had given three per cent., and he meant to discontinue it.

Mr. HAWKINS: Three shillings in the pound, my lord—fifteen per cent.

The LORD CHIEF JUSTICE: Then it is so much stronger than I thought it was.

Dr. KENEALY: Much stronger: and requires stronger evidence than GOSFORD'S to disprove it.

The LORD CHIEF JUSTICE: *And so preposterously absurd that it requires strong evidence the other way!!*

Dr. KENEALY: I decline to accept as conclusive GOSFORD'S evidence, when we might have had evidence that would have been much better.

* See the Cross-examination, 'Introduction,' page 98.

* As if trustees could not be enemies also!

† This was giving evidence; and what is worse, it was false evidence.

‡ See part of the cross-examination of GIBBES, *Trial*, Vol. I., page 177.

The LORD CHIEF JUSTICE: What other evidence?

Dr. KENEALY: I think Lord ARUNDEL, of Wardour, might have thrown light upon it had they put him in the box. I think, too, we might have learned much from Sir EDWARD'S cheque book. If the evidence in this Prosecution had been taken before a Magistrate, as in an ordinary Case, the Defendant would have known whether the Prosecution intended to rely on GOSFORD'S evidence alone; or whether they were going to give additional evidence.

The LORD CHIEF JUSTICE: What did Mr. GOSFORD say?

Dr. KENEALY: In his usual grandiose style—somewhat like Sir CHARLES COLDSTREAM in the play, or some other fashionable person in the drama—he pooh-poohed the thing.

The LORD CHIEF JUSTICE: Can you refer me to the evidence of Mr. GOSFORD upon that?

Dr. KENEALY: I cannot.*

The LORD CHIEF JUSTICE: I do not think he was cross-examined upon it; and unless you cross-examine a Witness the other side take it for granted that no further evidence is required.

Dr. KENEALY: Could the other side reasonably take for granted that we admitted one syllable of GOSFORD'S evidence to be true? The whole tenour of my cross-examination of that person must have dispelled such an idea. GOSFORD, I admit, pooh-poohed the whole thing. But Mr. GIBBES must have stated it in 1865 or 1866, and that statement may have got to certain ears. Thus they might have then said, We can get nothing out of this man; he is not the man for us. Gentlemen, the persons who resorted to forgery, and who endeavoured to strengthen those forgeries by false affidavits——

The LORD CHIEF JUSTICE: *What forgeries?*

Dr. KENEALY: The PITTENDREIGH forgeries.

Mr. Justice MELLOR: In this Court?

Dr. KENEALY: I did not say in this Court.

The LORD CHIEF JUSTICE: *What is there to shew that they knew that* PITTENDREIGH *was committing forgery?*

Dr. KENEALY: The evidence of Mr. CHABOT.

The LORD CHIEF JUSTICE: He said, he told DOBINSON that in his opinion PITTENDREIGH was committing forgeries.

Dr. KENEALY: He put it much stronger than that, he swore that he *convinced* DOBINSON that they were forgeries.

The LORD CHIEF JUSTICE: At all events they were not supported by evidence of that kind!!

Mr. Justice LUSH: *It was stated what they were!*

Dr. KENEALY: They are in evidence here.

Mr. Justice MELLOR: They were abandoned.

Mr. Justice LUSH: They were not put in as genuine.

Dr. KENEALY: They were offered here at first as being genuine. If they were subsequently abandoned—though I do not know and have never heard from Mr. HAWKINS they were—I do not thank the Prosecution for that. I thank my Lord Chief Justice.

Mr. Justice LUSH: No—the *Prosecution said they were not genuine.*

Dr. KENEALY: I never heard the Prosecution say so. Do they say so now?

Mr. HAWKINS: They were put in of necessity as part of the examination of the Defendant. They could not be excluded.

Dr. KENEALY: No—they could not be excluded. But you were opening them as though they were genuine; and then my lord interfered.

The LORD CHIEF JUSTICE: Mr. DOBINSON, a highly respectable attorney, would have been guilty of scandalous fraud, if he had been a party to anything done by PITTENDREIGH.

Dr. KENEALY: I have no feeling of hostility towards the memory of Mr. DOBINSON. But unluckily for that memory, there is the evidence.

The LORD CHIEF JUSTICE: If you say that Mr. DOBINSON was guilty of such a serious offence as to induce PITTENDREIGH to forge these documents and support them by perjury, I say there is no evidence to support such a charge.

Dr. KENEALY: I never said so; and I never said anything that implied it, after I had heard the evidence of CHABOT. According to that evidence, DOBINSON was himself at first deceived, until CHABOT undeceived him and *convinced* him that they were fabricated. Nevertheless, even after that, DOBINSON and Sir JOHN COLERIDGE used them at the Trial in the Common Pleas, as if they were genuine—when both of them well knew then that they were forgeries. I say that they ought not to have been produced or used.†

Mr. HAWKINS *(apparently not liking this discussion, and throwing the Court off its scent)*: Your lordship has asked about GOSFORD'S evidence as to the percentage given to the Roman Catholic Church. I find it in pages 276, 277 (Vol. II.).

[The passage was read. It was to the effect that Sir EDWARD DOUGHTY was not in the habit of giving largely, and that he knew this, because he kept his cheque-book; and the Witness said the idea of his giving 15 per cent. of his income was ridiculous and absurd.]

Dr. KENEALY: If the cheque-book had been produced it might have corroborated or destroyed GOSFORD'S evidence.

The LORD CHIEF JUSTICE: If his statement had been challenged by you I might have asked for the production of the book, but it passed unchallenged. *It carried conviction to my mind, because I had no doubt of the sincerity of the truth of* Mr. GOSFORD'S *evidence.*

Dr. KENEALY *(to the Jury)*: Gentlemen, his lordship thinks that GOSFORD was a sincere and true Witness.

The LORD CHIEF JUSTICE *(warmly)*: I was speaking to that particular part of the evidence. It is for the Jury to form their opinions both as to that and the rest of the evidence.

Dr. KENEALY: Nevertheless, it is no slight embarrassment to Counsel who has to comment on a Witness, that the Judge eulogizes that Witness beforehand in the presence of the Jury. However, gentlemen, we must go on as well as we can. I repeat we have not had the denial of the TICHBORNES giving three shillings in the pound for the support of the Roman Catholic Church in any way corroborated. They must have known, the priestly party in England, who are swearing against this gentleman's claim, must have well known, what were his real sentiments upon this subject: that he, at least, never would continue a payment of that kind. They might have offered, if they pleased, conclusive proof that there never had been payment to that extent; they have failed to do so. The whole of my dealing with GOSFORD signified very plainly that I did not regard him as a truthful man. They should therefore have backed him up in every way they could. I treated him as a person guilty of embezzling the money of his employers; and as one who had a large pecuniary interest in denying the claims of this rightful owner. I believe that they would have strengthened his evidence if they could, for there has been no lack of diaries or memorandum-books. Nearly all the family have produced their little books. Where is Sir EDWARD'S cheque-book, or account-book? GOSFORD says he has it, or has seen it—but it appears to be nowhere. If produced, it would probably settle the question. As I cast my eyes on Mr. HAWKINS he seems to suggest by those expressive looks that fifteen per cent. is an incredible, an impossible sum for a man to give to his priest. Why, the Mormons give a tenth of all they earn in the course of the year. Probably Mr. HAWKINS does not quite understand the feeling which prompts this generosity. He certainly interrupted me when I was dealing with another matter, which I think indicated a little soreness upon that particular blot; and he interrupted me with an air of no slight triumph. I do not care, however, for these numerous interruptions. I believe that they have done my Client good.

The LORD CHIEF JUSTICE: I wish, Dr. KENEALY, you had seen the heap of abuse that has been lavished on me for having interrupted you in the course of your opening Speech.

Dr. KENEALY: It would be unjust for me to abuse your lordship in that respect; I have expressed my thanks for many of these interruptions.

The LORD CHIEF JUSTICE: If you had not done so, I should have desisted: but that is not the way in which a certain set of fanatical outsiders look at this. I am glad that *you* take it in the right way.

Dr. KENEALY: I also have had piles of letters complaining of these—I will not call them interruptions, but interpellations. They are certainly not complimentary: or such as I should like to see published to the world in the *Times.* I have also a lot of printed documents, containing as false and wicked slanders as could be sent to any person. But let me resume. In all probability, at the time, calculations were made that this man would probably be so crushed that he would be prevented from presenting his Case to the Jury; but subscriptions came in from every part of England, and this man went about advocating his rights, and presenting every indication that he was an innocent man. Now, gentlemen, all these things came in small and large sums, and the result was that he is now able to defend himself. Then as to this meeting with the Carabineers, you are asked to come to the absurd conclusion that he was coached up by CARTER and M'CANN. Do you believe that any two men would have an intellect capable of suggesting the innumerable questions which would be put to him? These Carabineers came and saw him, and judged for themselves. It has been said that they only knew him by the questions put to him; but that is not so, for they spoke to him by his eyes, his hair, his general features, and that peculiar smile the man has—a smile of remarkable grace and sweetness. (Laughter.) Gentlemen, I am quite serious in what I say, although it seems that there are some persons here who are provoked into a smile by it. They recognised him by all those things which cannot deceive. If they had said, "We don't recognise him by his features at all, but by certain things which he has told us," then that would be a very different thing, and a powerful argument for the Prosecution. But that is not what they do, although it is what Mr. HAWKINS has sought to make them do. Contrast the evidence of the Carabineers whom I have brought forward with the evidence of the officers who have been examined, and who have not seen him except occasionally at the mess-table and other places. Contrast the evidence of the private soldier, who always has his eyes on his officer, and to whom he is, as it were, one of the features of the landscape, whom he always has to salute whenever he meets.

The LORD CHIEF JUSTICE: Not when he is in private dress, I think.

Dr. KENEALY: Yes, at all times, I think, my lord. Contrast

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* See GOSFORD'S Re-examination, *Trial*, Vol. II., page 276, 277.

† See for what took place, *Trial*, Vol. I., pp. 116, 117. Also 124-130. See, too, Vol. III. pp. 215-218.

that kind of evidence with the evidence of General JONES, who was Major JONES at the time ROGER TICHBORNE was in the regiment, who always was the last officer to leave the mess-table, and who, doubtless, found more pleasure and thought it infinitely more agreeable to contemplate the features of the wine bottle than to particularly notice the features of his brother officers.*

* This gentleman had a remarkably red and swollen face; and he was evidently one who thoroughly enjoyed what are called "the pleasures of the table."

[The Court adjourned at ten minutes to four o'clock.]

JEAN LUIE AND HIS BAIL.

One of the papers had the following paragraph on this day's proceedings:—

THE Witness LUIE, who had been in Court all day in the custody of the Tipstaff, Mr. FRAYLING, came forward with Mr. WHALLEY at the close of the proceedings, and requested to have his bail taken. The Judges said they would deal with the matter in their private room, and thither accordingly the Witness repaired, accompanied by Mr. WHALLEY and Mr. HARCOURT. The name of a second gentleman was given as one willing to become security with Mr. WHALLEY for the appearance of LUIE at any time up to the close of the Trial; but the Crown insisted on having the statutory twenty-four hours' notice, in order that they might make inquiries as to the sufficiency of the security, and the Judges ruled that this was necessary. The Tipstaff accordingly took LUIE to Holloway City Prison, where he will be confined till the meeting of the Court to-morrow. It is understood that the Crown had an additional reason for refusing to accept the bail offered, and that is, that they desire to have the recognisances increased in amount. An application to this effect will, it is stated, be made on the re-assembling of the Court, and the ground on which it will be based will be that two additional Witnesses have come forward to identify LUIE as a person who committed, or attempted to commit, a similar fraud on a firm with which they are connected as that alleged to have been tried to be perpetrated on Messrs. HOFFMANN, SCHENCK, and Co., and that, in addition, Witnesses are expected to come from Liverpool who will also be able to speak to identity.

ONE HUNDRED AND THIRTY-THIRD DAY.—WEDNESDAY, DECEMBER 3RD, 1873.

Dr. KENEALY: Gentlemen of the Jury, I have already hinted to you that this Prosecution seems founded on a principle utterly unknown and even repugnant to English law and every feeling of justice, namely, that at the outset guilt is to be taken for granted, and innocence must be assumed not to exist. The whole of the opening statement for the Prosecution was based upon the idea of guilt—of guilt positive, certain, conclusive, and absolute. The whole of the Witnesses for the Defence have been treated as if they were a cabal of criminals. The only excuse offered—if there can be an excuse at all for such unprecedented conduct—is that the mind of the leading Counsel has, by his own admission, been so "imbued" with prejudice for years that he is unable to divest himself of it when he comes as an advocate into this Court. Hence the extraordinary language—hence the outrageous proceedings—hence the violation of the ancient principle, not to assume guilt, but rather innocence, until the contrary is proven. On this principle Counsel for the Crown have hitherto acted. He makes his opening statement to the Jury in plain and unimpassioned language; he uses no rhetorical artifice. It is unusual and improper to interlard his charge with language which denotes a "foregone conclusion." He has no right in his character of Counsel to assume guilt at all. At Nisi Prius, where only civil matters are in dispute, the advocate often resorts to artifice—even to fallacies—though in my judgment wrongly; for every fallacy is a fraud; but such language as has been used here has probably not been heard since Mr. Attorney-General COKE disgraced himself in his Prosecution of RALEIGH. What do you say to such language as this—used by Mr. HAWKINS in his opening Speech for the Majesty of the Crown.

"What do you think now of the truth of the story of that will, with the ignorance which he betrayed with the result of a fraudulent transaction? Do you believe now it was the result of ignorance, and that the excuse that he made was the result of a fraudulent design? Why, I want to know, was all this ignorance of Upton betrayed? Why no mention of Upton? I should have said, except for his ignorance of it, 'Why, immediately you got to Sydney did you get hold of old BOGLE, who has got a house of his own, living there? And why did you take him out of the house to live with you? Why should you do that?' You can understand a thousand things which may be explainable if you once come to the conclusion that there was a design from the very first to fraudulently possess himself of this estate if it were within the bounds of possibility to do so. If you look at the obtaining of the information at each one step that was taken on the onward progress to establish this great fraud, then this was thoroughly done; but upon any other suspicion all this correspondence is absolutely unintelligible."

These are words quite novel to me, in support of a Criminal Prosecution. I never before knew that in modern times, at least, such were admissible. I never before thought it possible that in these days a Jury would be asked at the first to take for granted the crime charged, and then to twist and torture every part of the evidence which might be given on either side, with the view of supporting the foregone conclusion of guilt. Gentlemen, I say this never has been the Law of England, and in my opinion it is only the Law of Hell.

The LORD CHIEF JUSTICE: I really think, Dr. KENEALY, we must interfere. It is not right to use such language as that in a Court of Justice. In the first place, who knows anything about the Law which may prevail in Hell? It is taking a great deal upon one's self to say what the law there is. At all events, talking of the Law of Hell in a Court of Justice is what I never heard before, and I cannot allow it to pass. It is a most improper remark.

Dr. KENEALY: My lord, if you take upon yourself to prescribe to Counsel——

The LORD CHIEF JUSTICE (*angrily*): I take upon myself to forbid Counsel to use language what is, *I won't say blasphemous*, but indecorous and most improper.

Dr. KENEALY: My lord, I demand to be heard, and I say that if your lordship or any other Judge takes upon himself to prescribe to Counsel what language or what arguments——

The LORD CHIEF JUSTICE: Oh! argument. That is a different thing. I do not take upon myself to prescribe what argument should be used; but I do take upon myself to prescribe that propriety of language should be observed in this place.

Dr. KENEALY: If Counsel are forbidden right and proper freedom in defending their clients there is an end of Trial by Jury, and of all justice. If the Judge is to be perpetually on the watch to pick up any wandering word, Counsel may as well give up the appearance of defence.

The LORD CHIEF JUSTICE: A Judge should interfere when the language by the Counsel is improper.

Dr. KENEALY: My lord, with respect, I say the language was proper for the occasion.

The LORD CHIEF JUSTICE (*hitting the desk*): Sir, I say it is not; and I say it shall not be used. You have not the least occasion to resort to expressions of that kind which may shock some ears present, if they do not shock yours.

Dr. KENEALY: My lord I have ears as fastidious as those of anyone here, I hope.

The LORD CHIEF JUSTICE: Perhaps you may have; but it is the business of the Bench to correct any deviation from propriety, and I will not permit such language to be used in this place (sensation).

Dr. KENEALY: Gentlemen, what is said, is said. No language of mine can be sufficiently strong to express my abhorrence of the course taken here; no words that I can use, or illustration that I can hit upon, or metaphor that I may resort to, can adequately portray my disgust at what I have witnessed in this "Court of Justice." By the law of England—by the law of justice universally—every man is to be considered innocent until he is found guilty. By the practice pursued here, the Prisoner has been presumed to be guilty, and has been called upon to establish his innocence. This I say is a scandal; it is a scandal to any earthly tribunal; and it would be worthy of that tribunal alone to which I have alluded, and which so shocks "ears polite." I believe there is not an honest man in England who is not proud of that maxim of our Courts. I believe that is a leading principle, a light and a glory in our system of Criminal Judicature; and now, having for the first time in my life seen that maxim openly and insolently trampled upon, I should be a disgrace and a traitor to the Bar of which I am a member, if I did not protest against it. From first to last, Guilt, and Guilt alone, was the burden of Mr. HAWKINS'S song. Not only was the whole of the evidence for the Prosecution twisted to that end, but, strange to say, the entire testimony for the Defence was tortured to support that view. If the Defendant recollects a single circumstance appertaining to ROGER'S life, he has had it from a Baronetage, or from a genuine letter, or from an imaginary diary, or he has been coached up in it by some; and all, or nearly all his Witnesses have been victimed by himself, or BAIGENT, or Miss BRAINE, or Mr. ONSLOW. The olden theory of our law was, Innocence till Guilt is proved. The new theory is, Guilt till Innocence is proved. This, I say, is horrible; but this is what has gone on from the first. I declare against it; I fight against it, as a wicked and monstrous innovation. Oh! Gentlemen, Let us beware of the growth of tyrannical doctrines, or despotic practices. It is only by degrees that they

make advances, but every slight advance must be opposed. A great Trial like this may be a precedent for many great Trials to come; and what is allowed to pass here may be cited and used as a precedent hereafter; even to the shedding of innocent blood. If other Counsel in future days of that Tyranny to which I fear we are slowly wending, and in prosecutions similar to this, should forget the grand old doctrine of our fathers, and should resort to the one which we have seen followed here, there shall at least remain my words of protest in this investigation, expressed as strongly as I am allowed to do by the presiding Judge. It is my solemn duty therefore, and I fulfil it, not to allow anything to pass unchallenged which aims at the administration of justice. I, at all events, shall have recorded my opposition against such violation of the time-honoured course of centuries.

Gentlemen, it is possible to prosecute, yet to be magnanimous: to vindicate the law, but to do it with dignity. Has this been so in this Trial? On the contrary, as it seems to me. Everything has been mean, and small, and undignified and contemptible. The Spirit of Justice has been ignored; the Spirit of Wisdom has been absent; the Spirit of Truth has been disregarded. No temper, no moderation, no magnanimity. Ribaldry has taken the place of righteousness. Everything seems guided by Momus. The Lord of Misrule is always present. The words of JOB seem applicable. "*He leadeth counsellers away spoiled: and maketh the Judges foo's. They grope in the dark without light; and He maketh them to stagger like a dranken man* (xii. 17-25). Yet I think I see a day of Retribution for this. Nemesis in some form will avenge it. It is now only as a cloud in the distance, no bigger than a man's hand; yet I fancy that it will suddenly burst in tempest. The crime and punishment which have already been pronounced, and even proclaimed, are both so repugnant to Right in all things, that Heaven itself will awaken to do justice.

Gentlemen, there is a matter on which we must keep watch over ourselves when we are meditating upon this issue. We must not regard out-door talk. There are a good many persons who are fond of expressing their opinions without any fair ground. They know well whether this gentleman is innocent or guilty; they have settled all that long ago. I know an old gentleman, a country parson, a man of honour, purity and goodness, who has this motto perpetually in his mouth: "*If the Defendant is* TICHBORNE *he ought to be hanged: and if he is not* TICHBORNE *he ought to be hanged.*" Under any circumstances therefore, you see that according to this venerable authority my Client deserves a halter. If he is TICHBORNE he ought to be hanged for all the follies that he has committed; and if he is not TICHBORNE he ought to be hanged, for pretending to be so. This is a short, simple and beautiful mode of settling the vexed question. It might satisfy many persons outside, and probably even within these walls; but it is a summary proceeding for which the country is as yet hardly prepared. An old Sussex farmer, whom I have known for some years, wrote up to me the other day that he had christened his donkey, ROGER TICHBORNE; because of all the stupidities of which the Claimant was capable. But these things are only trifles; they should not affect us in our calm judgment. What I urge upon you is, that if he is to be punished, let his guilt be proved; let us judge him by those principles of justice which are recognized by all mankind. You will pardon me, therefore, if I again suggest that you should none of you be influenced by what you may hear outside. I believe you can hardly enter a railway carriage, or go to a dining-room, that you will not meet some shrewd person there who knows how it is all to end: "*The Claimant will be convicted, and get penal servitude, as he well deserves.*" There are plenty of paragraphs going the round of the papers, covertly I own, to the same effect. According to them everything is settled, and you are there simply to give effect to what has been decided already. There are hosts who form their opinions upon these things, or from the one-sided summaries of the daily press; or because they have heard something from BROWN, who heard from JONES, who was told by ROBINSON, that the Defendant was certainly ORTON. If you ask one of these, "Why is he ORTON?" the answer is, "Oh! BROWN says so; or ROBINSON thinks so." These are fooleries that can impose only on the lowest: on those who have no sense of solemn responsibilities; certainly, I hope, not on men like you.

I referred yesterday to the overpowering magnitude of this accusation; to the unparalleled gravity of this Trial. It differs from all other Cases ever tried within our knowledge, or in this country, that the Defendant is called upon to answer for his whole life. I will not undertake to answer for France, or Spain, or Germany, in which certain great Cases as to identity of person have been tried, but in this country we have no record of a Trial in which a Defendant was summoned to answer for his whole life, and pronounced to be guilty, because he did not on the instant remember correctly every particular, and fully explain every one of its varied phases. The conclusion demanded by Mr. HAWKINS to be drawn from his failing to be right in every particular, is, that he must be an impostor. If he has forgotten any of the events of his childhood, youth, or manhood, that forgetfulness is proof of his guilt. His single memory is put against the recollection of 200 other persons. What each of these individuals may possibly remember, or possibly fancy, as having been a portion of ROGER TICHBORNE'S life, and what a great many of them could not remember without referring to memoranda, to diaries and to note-books,—all these scattered fragments are concentrated together, and put against the unaided recollection of one man; and if he forgets a good deal, the cry is, Oh! he is a perjurer, and Guilty is the word. Nor are they satisfied with putting this view only to you. If he forgets, he is evidently guilty; but if he does not forget, if he remembers and states this or that accurately, O then, he has been coached; he learned it from BOGLE; he was taught by M'CANN; CARTER told him so; he wormed it out of Miss BRAINE; he got it from ONSLOW; from the Lord knows who! If he speaks wrongly and absurdly, as according to poor puzzled Mr. BULPETT he did, when he spoke of having joined the Carabineers at Canterbury, the nonsense is taken as conclusive against him; if he is right in his replies, he has been fraudulently coached! So that under whatever aspect his Case is viewed, the man must be guilty. How in the world can anyone escape conviction if such reasoning prevails? There is no chance, there is no loophole, there is no opening for the most innocent. If he has knowledge, it is not his own knowledge; and if he has not knowledge, he is an impostor. Is that fair? According to all justice, where a man answers as to past events with truth, we should believe that he answers from his own knowledge. In ordinary cases where a man is put upon his Trial for an offence, he has to answer some short specific charge. If he is said to have committed a robbery on the first of July, the evidence is concentrated on that one point and date, and he knows what he has to answer. The offence also alleged, is probably very recent: and if he was away from the spot where the robbery took place, he probably has Witnesses who can prove the fact. But this is a wholly different case. Anybody would shrink from proposing a charge against a man for what took place twenty or thirty years ago. People would say," Why, his Witnesses are dead or absent: he cannot meet such an accusation. It would be a monstrous thing to put him on his Trial, after such a lapse of time; when, if he had been tried when it happened, he might easily have shewn his innocence." This would be the argument in an ordinary Case: and it would be founded on wisdom and on honesty. But in this man's Case all wisdom and honesty are forgotten or ignored: and because he cannot surmount the impossible, he is Guilty. They begin with him in Paris, when a mere child. His mother who could tell us all about him then, is dead; and we are left to the tender mercies of CHATILLON. They call this person to prove an accident; and he proves it, or swears to it in his own way, in which he is not corroborated: and if the Defendant does not call Witnesses in reply, who may be dead, or who, if living, cannot be brought here for want of funds, then it is said, "CHATILLON is uncontradicted: CHATILLON is the Witness of truth. CHATILLON is to be credited, and the Defendant is not to be credited." What can *we* do about that accident at Pornic? We have no money, as all the world knows, and even if we had we must go more than thirty years back; and how can we search for Witnesses in France, and bring them to England, if we find them, without a single guinea in our pockets? The Crown might, because it has the gold of the Treasury at its back; but we are miserable paupers without a shilling. Why has not the Crown corroborated the astounding story of CHATILLON, that young ROGER fell upon a *sharp-pointed* rock, and that no blood followed? Where is the doctor who attended the child?

The LORD CHIEF JUSTICE: The medical man was proved to be dead.

Dr. KENEALY: I recollect no such proof. If CHATILLON hinted or suggested it, that could have been hearsay only, which is no proof, and may be invention. But assume that he is dead, is nobody dead who could corroborate the Defendant's narrative? Are all those to be taken as dead whom the Crown does not call to corroborate its suspicious whispers? and are all whom the Defendant cannot afford to call, for want of means, to be taken as alive? This is pretty justice! And because we do not call these persons, why then the Defendant inflicted the scar upon the back of his head with his own hand!

The LORD CHIEF JUSTICE: *I think that would be ridiculous. I have never heard it suggested!!!*

Dr. KENEALY: Well, perhaps I should have said "implied," rather than suggested. But the suggestion would not be one whit more "ridiculous" than the suggestion that he cut his ankles and scarified other parts of his body like some Red Indian. It was undoubtedly said that he had not the scar at the back of his head when it was first named by CHATILLON.

The LORD CHIEF JUSTICE: No—the accident was referred to by CHATILLON, who took off his hat and showed the way in which an indentation was formed; upon which Mr. LEETE and Mr. HOLMES looked for it on the head of the Defendant, but failed to find it. The next day it was looked for by a hair-dresser, and *a* scar was found.

Dr. KENEALY: And does not that suggest or imply that it was fabricated in the interval? The distinction between the Defendant doing it and getting another to do it for him is a distinction without a difference. Fraud would be at the bottom of either, and fraud is either suggested or implied. But if your lordship likes, I will exclude that particular mark from the numerous marks which the Defendant made upon his person, so that he might resemble ROGER TICHBORNE—while he omitted or forgot the greatest of all, the famous tattoo of Normandy and Stonyhurst. Let us see what pains the butcher took to make himself like ROGER TICHBORNE. He knocks out two of his front teeth, so that he might imitate his mode of speech; he obliterates a tattoo

mark, which I am not quite sure that ORTON ever had, but which if ROGER really had must have been communicated to the Defendant by his many coaches. He makes incisions in the saphena vein, of which probably not one man in a hundred thousand has heard. He manipulates a peculiar thumb. He fabricates an in-knee walk. He changes the splaw-foot tread into one that is light and active. He imitates the twitching of ROGER. He occasionally assumes a foreign accent; and dies his red hair every morning into a deep dark brown. He hides the piercing of his ears. He obliterates the scar on his hand, and the cut on his face. He diminishes the size of his head. He disguises in gloves and boots the enormous hand and splaviners of ARTHUR. A famous Roman Catholic theologian reading of an astounding miracle, exclaime l, "*Credo quia impossible:*" I believe it, because it is impossible. And so ought we, Gentlemen, in this Case.

Gentlemen of the Jury: Permit me to read to you, on the subject of foreign Witnesses, like this man, what I find in a book of considerable reputation. I mean *Taylor on Evidence*. "The testimony," he says, "of foreigners, and of others, who, living out of the jurisdiction, are brought from a distance to the place of Trial, often requires to be scrutinised with more than common caution; for as such persons speak before a tribunal which ordinarily knows no more of them than they care for it, whose threat they have no reason to fear, and whose good opinion they utterly disregard, they are obviously far less likely than Witnesses living on the spot to be influenced by the dread of having their falsehoods exposed. The detection of perjury in their case involves but little loss of character and no real danger of punishment. A dishonest foreigner, too, who has attained a tolerable knowledge of the language, has always this advantage over a native, that he may modestly conceal his proficiency as a linguist, and avail himself of the assistance of an interpreter, which gives him an opportunity of preparing with due caution his answer to any inconvenient question while the interpreter, all unheeded, is performing the superfluous part of furnishing him with a needless translation."

Gentlemen, this affair of the fall at Pornic, is an instance of the difficulties we have to meet—difficulties upon things that happened twenty, thirty years ago, or even more. The very latest event in his life to which he has spoken was in 1853, more than twenty years ago. The very earliest begins when he was a boy of nine or ten. I think it therefore most unfortunate that he should have been committed by Judge BOVILL to take his

LORD ERSKINE.

Trial upon circumstances which involve his having to account for nearly the whole of his life. The learned Judge might justly have committed him upon one charge, or two, or three; for instance, whether he was ever at Stonyhurst or not? whether he courted Miss HALES or not? nay, even upon the matter of Miss DOUGHTY alone. In either of these cases, there would have been short and intelligible issues, which might have been disposed of in a few days; and then there would have been something like an appearance of fairness. That course would have been taken, had justice, pure and simple, been the object. But is justice the real object here? That question I leave to you. At the trial of HARRISON in 1693, for the murder of Dr. CLENCH, a Witness was called by the Crown to prove a felony against the prisoner, which had taken place three years before: whereupon Lord Chief Justice HOLT exclaimed, "What are you doing? Are you going to array his whole life against him? Away! away! that ought not to be, that is nothing to the matter." Such was the notion of one of the greatest, because honestest, Judges that ever adorned the Bench, and whose decisions must ever be regarded with respect and even reverence. Honesty above all things was his characteristic. If he had lived to these Tichborne days, I wonder what he would have thought and said of this Tichborne Trial!

Is there any of us—I exclude none here—who could pass through a cross-examination of his whole life? Consider, any one of you, and you will find how very little of the past you really know so as to recollect it well. You may have a dreamy notion of men and things, but when you begin to examine yourself and to enter into details, you will be puzzled even about five years ago—I mean, so as to answer with precision. Great events in your lives you may remember, but as to the ordinary incidents of life—where you dined, with whom you walked or rode, whom you visited, or upon what you conversed—you cannot answer these things beyond a few years back. How, then, can you expect them to be answered if they go beyond a quarter of a century? If you try, as I suggest, you will be surprised at the mistakes you will involuntarily make. And if you make these mistakes, why should not he? And if he makes these mistakes even to the amount of hundreds, are all these mistakes lies or perjuries? When a railway accident takes place we hear at first that so many dozen lives were lost; these gradually sober down to perhaps two or three. So in the case of battles or military

encounters, we usually hear in the beginning that hundreds or even thousands of lives were lost; these afterwards prove to be perhaps a score. These are not deliberate inventions of the persons who publish them, but they arise from that looseness of language which is but too common. How harsh and cruel would our judgment upon these men be if we concluded that they were habitual liars because of this. Yet you are told that every mistake or inaccuracy of this gentleman is a sign of falsehood, or that it proves that he is not the man whom he represents himself to be. And if in ordinary men we do not look for this absolute precision, how can we look for it in this man of so many strange accidents and incidents? Have they not so affected his head that the wonder is how he can be accurate in anything? Ask yourselves also, Whether he answers always in the spirit of folly or thoughtlessness? Whether he does not sometimes grow sullen and even sulky? and argue thus within himself: "They are using me too hardly, they are pressing upon me unfairly. This is not what I expected to receive; therefore I shall not heed what answer I give. I am TICHBORNE; they never can destroy that fact. I shall answer them as I like?" It seems to me that replies such as this man gave were sometimes extorted from persons on the rack—whether before the Inquisition or in the Tower. Think, I beseech you, to what torture this man was subjected by Mr. Attorney-General COLERIDGE; a torture like that which has forced wrong and untrue confessions from many. If he were a false man his agony must have been extreme; but if he were the real ROGER how much more bitter must have been his reflections. Everything seemed torn by the vulture out of his heart. His soul was racked to death. He was devoured as it were by a raging fire. And this not in some dark and private chamber of the Inquisition, but in a public Court and before all England; which prides itself so grandly upon the purity of its procedure!

Gentlemen, upon these things I hope you will reflect. Above all, examine yourselves upon memory—upon your remembrance of days and things gone by. One of the most shrewd and philosophical writers, MONTAIGNE, says:—"Some have forgotten their own names by the virtue of disease; and a slight wound has turned the judgment of others topsy-turvy. Let a man be as wise as he will, he is still a man; and than one what is more frail, or more of a mere nothing?"

The LORD CHIEF JUSTICE: *Where is that?*

Dr. KENEALY: I find it in page 158 of the royal octavo edition. I will bring the volume here to-morrow, if you like.

The LORD CHIEF JUSTICE: You need not do that.

Dr. KENEALY: I have remarked before, gentlemen, that the powers of memory depend in a great measure upon the powers of observation. You will remember that I quoted to you that admirable little production of Dr. AIKIN, which is to be found in all our schoolbooks, and which I never read without experiencing new pleasure. I mean the dialogue headed "Eyes and No Eyes." Now hear what MONTAIGNE says of himself as regards his powers of observation, bearing in mind the while, that France still boasts of him as one of her greatest men—one of her best thinkers, scholars, and philosophers. "I was born," he says, "and lived in the country, and I have had business and housekeeping on my hands ever since my ancestors left me the estates, and yet I cannot cast up accounts. Most of our current money I don't know, or the difference between one grain and another when growing. I can scarcely distinguish between the cabbage and the lettuce growing in my own garden."

Here is a man of great mind, but he has no faculty of observation. He goes on, "I don't so much as understand the names of the chief implements of husbandry, nor the most ordinary elements of agriculture, which the very children know." If the Defendant were ignorant of those things which the great MONTAIGNE did not know, how the learned Counsel would cry out, "He is not Sir ROGER TICHBORNE. He who has been at Tichborne Park and in Tichborne Gardens for so many years, does not know the difference between a cabbage and a lettuce. Prodigious! He does not know what a serafile is, or the most ordinary things connected with his regiment!" Yet you find MONTAIGNE confessing to his ignorance of "the most ordinary things," though he lived in the country all his life. There are persons who take no notice of such matters, and this Defendant is one of these. Yet even if he *had* noticed, it would not follow that he should always recollect. Dr. JOHNSON, whom my lord admires and follows so much, was a man of wondrous memory; yet even he confesses the weakness in some of this mental attribute. Writing to Mr. SAUNDERS WELCH in 1778, he says—

"Miss NANCY has doubtless kept a constant and copious journal. She must not expect to be welcome when she returns without a great mass of information. Let her review her journal often, and set down what she finds herself to have omitted, that she may trust to memory as little as possible, for memory is soon confused by a quick succession of things; and she will grow every day less confident of the truth of her own narratives, unless she can recur to some written memorials. If she has satisfied herself with hints instead of full representations, let her supply the deficiencies now, while her memory is yet fresh, and while her father's memory may help her. If she observes this direction, she will not have travelled in vain; for she will bring home a book with which she may entertain herself to the end of life. If it were not now too late, I would advise her to note the impression which the first sight of anything new and wonderful made upon her mind. Let her now set her thoughts down as she can recollect them; for faint as they may already be, they will grow fainter and fainter every day." And what did CUMBERLAND, the dramatist of the last century, say of Dr. GOLDSMITH? "Poor fellow! he hardly knew an ass from a mule, nor a turkey from a goose, but when he saw it upon the table." This may have been exaggerated, but it goes to show that GOLDSMITH was not a man of observation. And this Defendant is an impostor, because he has the failings of JOHNSON, GOLDSMITH, and MONTAIGNE!

Gentlemen, there is another piece of unfairness, of which I think I ought to give you a sample. I do not mean to give you a *catalogue raisonnè* of the various questions which were put to the Defendant on points upon which at the first blush it would seem that he ought to have some knowledge; and his ignorance with regard to which was subsequently used against him in the strongest way. He was cross-examined in 1871 on his knowledge of Latin, though it is certain that in 1848 he was so ignorant of it that he dared not face a Latin examination at Sandhurst.

The LORD CHIEF JUSTICE: That was in 1849.

Mr. Justice LUSH: In 1848, ROGER TICHBORNE was at Stonyhurst.

Dr. KENEALY: Your lordships are right: but how frail is human memory, when I, who ought to recollect these dates, am inaccurate upon them. No one has disputed that his knowledge of Latin in 1849—if in truth he had any—was very small.

The LORD CHIEF JUSTICE: You must bear in mind that he had the option of being examined in some modern language, instead of Latin!

Dr. KENEALY: Yes, he might have been examined either in Latin, German, or French; and he thought he would go in for French. The examination in Latin was probably not very serious; and when he went to Sandhurst with Colonel GEORGE GREENWOOD, if he had had any ambition to excel, and it has been intimated that he had that ambition while in the army, had he known anything of Latin he would probably have been examined in it. The fact that he was not so, is pretty good proof of his ignorance. It is not unworthy of observation that the questions which were put to ROGER TICHBORNE at the Horse Guards, and his answers, have, whether from accident or design I know not, been destroyed. I should have thought that they were more important than the arithmetical document which was produced.* That paper showed a lamentable ignorance, and the answers to the questions put at Sandhurst would have thrown a flood of light upon the intellectual state of this young man at that time.

The LORD CHIEF JUSTICE: It was proved, I think, that they only keep the papers in cases in which a man fails; *and I suppose that is done in order to be able to justify the refusal of admission.* The Witness said the papers were not kept if a man passed.†

Dr. KENEALY: Still I regret that the document is not in Court, as it would have been useful for the purposes which I have mentioned. And why they should have kept the foolish one which they did, and destroyed the others, which were perhaps equally or more foolish, I cannot understand.

The LORD CHIEF JUSTICE: For this Trial its preservation was eminently desirable.

Dr. KENEALY: I am glad your lordship says so.

Mr. TAYLOR (Juryman): He passed in everything but arithmetic; in everything that was necessary.

Dr. KENEALY: And yet his attainments must have been very trifling. I have made this allusion in connection with his forgetfulness, and his defective powers of observation. The Lord Chief Justice asked the Rev. ROBERT MANN whether ROGER TICHBORNE learnt Latin. Observe the cautious way in which this Stonyhurst Professor, who well understands what words convey, replies to that question: "Yes, my lord, he learned *some* Latin." "Some Latin" may mean one of the declensions only; or it may mean a knowledge of half-a-dozen classic authors; and yet a knowledge that would be far from deep. There is no proof, though a good deal of suggestion, that during the whole period he was at Stonyhurst he ever did anything more than construe two or three lines of CÆSAR; and yet you are asked to find that he is an impostor because he did not know Latin in 1871. During this Trial you have seen persons with remarkable memories for dates and circumstances, and men of that kind are disposed to fancy that nobody can forget anything. Such a man is apt to judge other people by his own standard; but that is a fallacious test. So again one man has wondrous powers of observation; marvellous faculties for forming an accurate judgment; whereas others have hardly any such faculties at all. You walk through some strange place by the side of a friend, and you afterwards find that he has noticed nothing. You say to him, "What have you been doing with your eyes?" and he is amazed at the enquiry; he fancies he has been using them all the while. You give directions to your servant; and he asks you "What did you say, sir?" The man has heard every word you said, but they have made no impression on his brain; he has fallen into the bad habit of not using his ears. In Courts of Justice we have constantly to repeat our questions to Witnesses who are accustomed to use neither ears nor eyes. What evidence is there

* See this: *Trial* Vol. III., page 97; with Dr. KENEALY'S comments thereon, page 302.

† An ingenious excuse for the non-production of these papers.

that this Defendant has any powers of observation? I don't mean to deny that he has the curious faculty of remembering paltry things in a remarkable degree. He will tell you the colour of a horse after twenty years have passed; or of his having fired a shot at a halfpenny; and such other rubbish which none of us would deign to recollect; but in those which an intellectual man would remember he is deficient of all recollection. Nor is it any wonder that his mind should be so constituted, when we remember how he was brought up. With tutors around him on all sides, he was about as ignorant as he could well be when he went to Stonyhurst. He had never been cultivated. I don't deny that he had naturally a good intellect, if it had only been attended to. But to his sad misfortune he never had a painstaking tutor, or a wise or good friend. His correspondence has got into the hands of the Crown; and we have letters in abundance from Lady DOUGHTY and from two or three other persons, and from GOSFORD; but hardly a letter from any friend.

The LORD CHIEF JUSTICE: Subject to the opinion of the Jury on his evidence, you will remember that GOSFORD mentioned that he left a mass of letters behind him at THOMPSON'S, which were sent to GOSFORD, *and by him destroyed.*

Dr. KENEALY: What a pity it is that that mass of letters should have been destroyed! It is very well for GOSFORD to attempt an explanation, but, unfortunately, we have nothing but his word. There hardly occurs an allusion to any letters of importance.

The LORD CHIEF JUSTICE: There are also two remarkable letters from WALTER STRICKLAND.

Dr. KENEALY: These hardly constitute a correspondence.

Mr. Justice LUSH: I thought he said he corresponded with Abbè SALIS.

Dr. KENEALY: It was not shewn that the Abbè received letters from him.

Mr. HAWKINS: He wrote to Lady TICHBORNE, my lord, and rather complained of his letters not being answered.

The LORD CHIEF JUSTICE: No doubt; but that would not meet the argument, as these letters were written at a very early period.

Dr. KENEALY: We have the fact from the Abbè that he received but one letter.

The LORD CHIEF JUSTICE: There seems to have been a series of letters.

Dr. KENEALY: Would your lordship call that a series?

The LORD CHIEF JUSTICE: He says there were five or six; and ROGER TICHBORNE in his letters reproached Lady TICHBORNE for reading or keeping back his letters to the Abbè.

Dr. KENEALY: I do not think he goes the length of making the insinuation that she opened them.

The LORD CHIEF JUSTICE: He says, "I do not know how he should not receive them, unless you kept them back."

Dr. KENEALY: We have the oath of the Abbè SALIS that he never received but one letter; and it seems odd that ROGER TICHBORNE should have gone on writing half-a-dozen other letters without getting an answer. At all events, these observations do not affect my proposition, that there is no indication in the whole of this unhappy young man's career that he ever had a male friend who was capable of giving him a word of good advice. On the contrary, he was mixed up with a number of flighty young officers, who, in their relations with mankind at large, might have been honourable men; but who in their relations with ROGER TICHBORNE conducted themselves in a manner not worthy of our admiration. As for his habits of business and legal lore, of which so much has been boasted, you may form some idea of both from his notion that if he scratched his pen over the name of EVERARD ARUNDEL in the will, EVERARD ARUNDEL would thereby lose all his interest under that instrument. This is the young man who is supposed to have been a match for that great conveyancer, Mr. BURROWS of Lincoln's Inn. Hence, I think, you may well suppose that most of these business letters were dictated or copied out for him by GOSFORD; and if we accept this, what becomes of all the praise that he has received for cleverness, talent, knowledge, and the like? There was at that time very good postal communication between England and Ireland, so that there would have been no difficulty in the matter. It appears to me that ROGER was really incapable of writing business letters; and that they, or at all events, the leading points, must have been suggested by GOSFORD. The letters which were written from time to time to Lady DOUGHTY, might have been written by ROGER: perhaps in some instances they were corrected. Some of the letters from Rio indicate a mind capable of composing a good epistle and of narrating adventures with some clearness.

Mr. TAYLOR (Juryman): The reason he did not write to the Abbè SALIS was, because he lost the address, I believe.

Mr. Justice LUSH: In one of his letters to his mother, he says: "I can't conceive why the Abbè SALIS has not received my letter. It must be your fault?"

Dr. KENEALY: Several letters have been written, and several suppressed, and that is what I complain of. They give and hold back what they please.

Gentlemen, I do not mean to carry you again through the evidence relating to ROGER TICHBORNE'S intemperate habits. You must now be convinced that he was in the habit of drinking largely, not only of wine, but of spirits. Captain CUNLIFFE, I think it was, who said "he soaked his brains."* Now, that is of all kinds of intemperance the most dangerous. It is something like having recourse to opium. If you drink, and it renders you hilarious, the effect passes away in a short time; but if you drink until you are "soaked," the poison remains in the system, and nothing is more likely to destroy life speedily, or at all events to do the brains permanent damage. Mr. HAWKINS asked the Witnesses "Did you ever see him drunk?" and they answered, "No." It may be that they never saw him exhibit the usual signs of drunkenness, that is to say a staggering gait, and an incoherent tongue. But they had seen him, doubtless, in a much worse condition, though with mental reservation they did not feel called upon to describe it. I will not weary you with his miserable confessions to Lady DOUGHTY, or his broken vows. I suppose his sobriety was on a par with his chastity; both were equally mythical, or they would not have conducted him to the bagnios at Preston. From what we have been told, he was a second edition of JOSEPH in Egypt. He had, indeed, many things in common with JOSEPH. He was a wanderer and an outcast like that young man, and his chastity was of an equally immaculate kind. He was sold by his brethren, and they subsequently denied all knowledge of him, and like JOSEPH he was guilty of an incredible act—for years he never sent one word of tidings of himself to his poor old father. It is said that this man is not ROGER TICHBORNE because he never wrote to his mother. They might just as well say that JOSEPH was not JOSEPH because he never sent word of his existence to that father who loved him so well. I mention this argument merely to treat it with contempt, for I do not think that you can be influenced by such an absurdity.

The LORD CHIEF JUSTICE: If I were you, I would not treat it with contempt. *It is one of the most formidable difficulties in the Case*, and in your place I should not treat it in that light way.

Dr. KENEALY: If I had deemed that your lordship thought so much of it, I would not have treated it with such an amount of scorn.

The LORD CHIEF JUSTICE: Whatever argument you have to urge on this you had better use, because it is to me one of the most vital and important points.

Dr. KENEALY: When first I mentioned the matter your lordship treated it in joke, and you told me that there was no electric telegraph in those days. I am not quite positive that there was an electric telegraph between this country and Australia twenty years ago; nor is it certain that if there were, the Defendant could have availed himself of it, for I believe that every single word costs five pounds. But the Prime Minister of Egypt, such as JOSEPH was, could have had no difficulty in communicating when he liked with ISAAC—and yet he did not. I own I have not considered the point as one of importance, but later on I may perhaps suggest one or two good reasons why ROGER did not communicate with home. All I do at present is to remind you that he is not the only person recorded to have forgotten both father and mother. I was on the subject of his chastity, which recalled to me the name of JOSEPH. Let me revert to that subject. And here permit me to say that the gentleman (Mr. HOFFLAND) who gave his evidence on this Preston matter, has exhibited a very rare degree of heroism. There are few men brave enough to come into a Court like this, and open anew a transaction which might have been for ever hidden.* I think he deserves praise, even admiration for his self-sacrifice in the cause of truth and of a persecuted man. Mr. HAWKINS tells us that the Defendant went to Preston, and by accident learned that ROGER TICHBORNE frequented a certain house of accommodation there: and that when he met Mr. HOFFLAND he reminded him of it, and that that made Mr. HOFFLAND think he was the man. But who told the Defendant that ROGER used to visit that house? These visits were paid during the immaculate Stonyhurst days; and he had no BOGLE, CARTER, or MCCANN, to put him on the scent. If ROGER habitually went to that house, there is an end to his character for chastity; though he has been put forward as a sort of saint, like one of the old eremites; or ORIGEN, who secured his chastity by an extraordinary device, which they say he grounded on *Matt.* v. 29. Who taught ROGER all this chastity? Did he learn it from Lord BELLEW? or from the equally virtuous PAUL DE KOCK? It is about as true as STORES SMITH'S wondrous tale of his profound theological and historical studies. I will not condescend to dwell upon such trash, but I *must* express my regret that one of the Carabineer officers should have come to persuade us that he was a learned student of history and other grave erudition.

The LORD CHIEF JUSTICE: Is there anything to show that he was not?

Dr. KENEALY: I think his whole career proves the contrary.

The LORD CHIEF JUSTICE: *That is a charge against the Witness!! Do you think the officer invented it?*

Dr. KENEALY: I do not say that the officer invented the statement; he probably confounded ROGER TICHBORNE with someone else. In almost every regiment there are two or three men of a grave and studious turn; but the whole force of the evidence here and the whole spirit of his letters shew that ROGER TICHBORNE was neither a student of history nor of theology. Bear in mind, I pray you, Gentlemen, that the Crown kept back, as long as it could, the fact that ROGER was leading a drunken and scandalous life at Rio, till the very day before he sailed in the 'Bella.' They

* See the evidence of Captain CUNLIFFE, *Trial*, Vol. VI., page 16.

* See Mr. HOFFLAND'S evidence, *Trial*, Vol. VI. page 238.

call that pensioned hireling OATES, to prove that he was not leading such a life, and fortunate for me was it that they did so, for it thus became necessary for them to call that true, though flighty, Witness HOSKINS, who proved that when the 'Bella' sailed ROGER was miserably and hopelessly drunk.* Captain BROWN, who has been so much maligned, gave evidence to the same purport. So much therefore for these parts of the Defendant's Case and personality—for his forgetfulness, his chastity, and his sobriety, and the other reasons and things which have deteriorated his morals no less than his memory.

Gentlemen, if this Defendant's story be true, we must be prepared for any amount of folly in his career. Hardly anyone but a fool would abandon home and parents, relatives and friends, in the wild way that he did. His acts can be accounted for only by the extreme of folly, fanaticism, or despair. When I addressed you previously, I put before you a theory which might have accounted for this gentleman's aberrations. He might have felt that his life was useless, and that he should never leave one behind him to perpetuate his name. Or if his story with respect to Lady RADCLIFFE be true, he might have been struck with the numerous instances in which persons who had lived in self-indulgence and sensuality had in a moment been stricken with remorse, and had withdrawn themselves from the world for the rest of their days. The story of Saint ALEXIS could not fail to have made a deep impression on his mind—as it must on that of any one who has heard it—and there is some resemblance in what he did to that part of the Saint's strange story, although the one did not hide himself from observation because of remorse for excesses, but because he had a mind predisposed to a retired, contemplative, and eremitical existence. He might have somewhere read that curious story narrated by WASHINGTON IRVING, or NATHANIEL HAWTHORN (I forget which), of the innkeeper who left his wife in Newgate-street, and after an absence of twenty years, suddenly reappeared; but never told why he went, or where he had been during the interval. Or I may suggest a third reason. He might have felt real disgust with the life he had been leading in England: a desire, in sheer despair to get rid of the mean trammels of society, and to plunge into a new and opposite life of unbounded freedom, which may have glowed with many a glittering attraction for such a mind as his. I am not, indeed, bound, or even called upon to demonstrate to you the exact or reasonable or logical grounds on which this man thought it well to play the fool; but if it be true that the real ROGER TICHBORNE seceded from all society, and became a wild man, we may be then prepared for any amount of nonsense which he exhibited in the Witness-box at the Common Pleas. Nor ought we to forget that his letters show him to have been in a miserable state of health, although he concealed the fact from those whom he regarded. Then, when he found himself in another clime, for which his constitution seemed better fitted; when he could wander at will from mountain into valley, from glen to forest, from wild ravine to still wilder river or cascade; it might be that with increased health and physical enjoyment, he felt a music, an enchantment, in this strange medley of adventure, which determined him not to come back to Europe. And this wretched interval of sickness, dissipation, depression, and general contempt, which he passed while in his native land, reminds me that I should make a flitting allusion to that cottage life of his at Stonyhurst, which all the fathers were up in arms to deny. Bear this in mind, however, that one of these reverend Witnesses admitted that no youth would be sent to a cottage, unless his health rendered it desirable to segregate him from the other pupils; unless, indeed, he was suffering from some contagious disease. We may well assume, therefore, that it is proved there was and must have been such a cottage.

The LORD CHIEF JUSTICE: *The Defendant's own statement was, that he was sent there on his arrival! and before he had any opportunity of going to Preston.*

Dr. KENEALY: Well, my lord, and why may he not have been then in a condition to require it? Is a contagious disease to be caught only in Preston? If those who were suffering from disease were sent to the Cottage, what is there to show that when he entered College ROGER TICHBORNE was not so suffering?

The LORD CHIEF JUSTICE: The Cottage was the first place he went to, as he says?

Dr. KENEALY: Yes, my lord.

The LORD CHIEF JUSTICE: Well, he could not have been to Preston at that time. The people at the College would not have taken him in if he had gone to Preston and caught a disease.

Dr. KENEALY: Are we certain of that? He might have caught disease elsewhere. He had just come from Paris, and London. Your lordship assumes that he could get it only at Preston. He might have got it in London, in Paris—anywhere. It seems clear from the questions that he put, that the fact had been communicated to the Attorney-General; and if *he* knew it, the authorities of Stonyhurst must have known it likewise. Your lordship assumes also that these reverend fathers at Stonyhurst under such circumstances would not have received him. If we are to judge by all we have learned of the discipline, or rather want of discipline there, those reverend gentlemen were not so very strait-laced. Besides, may there not have been politic reasons why they should not thus affront a TICHBORNE? Might they not have wisely winked at what was only the folly of a boy? Are we to expect from them the most rigid mathematical precision in all things? Are there not occasions when circumstances tell us that we need not see all that passes before our eyes?

The LORD CHIEF JUSTICE: Address yourself to the Jury, Dr. KENEALY.

Dr. KENEALY: Yes, my lord; but I thought you had asked me the question. Gentlemen, let us consider that ROGER was a very near relative of Lord ARUNDEL of Wardour, who probably has as much influence at the Vatican as the Duke of NORFOLK himself. The authorities at the College could not fail to be grateful to a family which had done so much for them since the revival of their Church in England. ROGER TICHBORNE had come over from Paris, mainly to learn English; and if he was found to be out of health, they might have placed him in the Cottage until he had got better and rubbed off a little of that Frenchman, to which his father so vigorously objected. Under Father PATER, who was, probably, a physician as well as a priest, they might have thought he would do well. Now observe the tenacity with which the Defendant adhered to this story. No amount of menace, or cajolery, in cross-examination could drive him from it. Why, if he were ARTHUR ORTON, he would have reasoned thus: "The students of a college live in a college. What have they to do with cottages?" The Defendant is said to have had advisers who knew everything. Above all he had at his elbow perpetually that omniscient BAIGENT, who if he had been in the law, would have been Lord Chancellor; had he entered the army, he must be Commander-in-Chief; or if he had been a merchant, he would have beaten the ROTHSCHILDS—so marvellous and astounding were the powers that he possessed. Well, BAIGENT lived at Winchester. He is a learned archæologist, and he knows all about colleges. All that HOLMES and ORTON would have had to do would be to go to BAIGENT, and he would have told them probably at once that the Claimant would have no chance if he talked of living in a cottage. Yet this man persists that he did for a time live in a cottage at Stonyhurst, and nothing can drive him from it. There must be good reason, therefore, for his thus determinedly adhering to the story given; a cottage in which we know now that students who were suffering from certain diseases were received——

The LORD CHIEF JUSTICE: The Witness you refer to did not say that there was a cottage for that purpose; but that a student would not be sent to such a place unless he were suffering from a contagious disease.* *There is a rule against receiving a youth suffering as you say within the cottage.*

Dr. KENEALY: I have heard no evidence, my lord, of any such rule as to the non-reception of students under such circumstances: but if your lordship says so, I suppose you must be right; nevertheless, the thing might have occurred under the circumstances suggested. There are no rules without exceptions; and an exception might have been made for a connection of the ARUNDELS coming there under circumstances which would render a cottage life for a time desirable. And I say that we *must* think there are *some* grounds for this Defendant so doggedly persisting in this story of his residence at a cottage; when it would have been so easy for him to let it alone.

The Foreman of the JURY: It was inconsistent with their rules to *receive* a youth suffering from a contagious disease.

Dr. KENEALY: I can only make the same answer to you, sir, that I have made to the Chief Justice, namely, that I have not heard any such rule proved; that there is no general rule without an exception; and that in this Case there were powerful circumstances and good reasons why the rule should be relaxed—if rule there were.

The LORD CHIEF JUSTICE: *My difficulty is, that what you say is what the Defendant has never said!*

Dr. KENEALY: Will your lordship only wait a little? I cannot say all things in one moment. My contention is that he went—perhaps necessarily went—to the Cottage on two occasions. They say he must have been coached in nearly all he swore to. Who could have coached him into this, which seems at first to be an absurdity? Did Father GUY, who was a Stonyhurst man? The Crown has gone so far as to insinuate that this reverend gentleman is a sort of accomplice in this alleged fraud: did Father GUY coach him into the cottage notion? I think it is incredible. Well, then, there is only BAIGENT who is likely to have been consulted in such a matter; and BAIGENT of Winchester knows probably about as much of the rules of colleges as any man in the country.

The LORD CHIEF JUSTICE: *Winchester is a school, and Stonyhurst is a college!*

Dr. KENEALY: No, my lord, Stonyhurst is only a school. I understand the difference between a college and a school to be this: that the first grants degrees, the second only educates for one.

The LORD CHIEF JUSTICE: *That is only a technical distinction. The real distinction lies in the ages of the pupils, the nature of their studies, and the liberty which is allowed them.* At Stonyhurst, the College is quite distinct from the school. The scholars live in the College, and the philosophers in the Seminary.

* See the evidence of HOSKINS, *Trial*, Vol. VI., page 376.

* See the evidence of the Rev. Mr. FITZSIMON (*Trial*, Vol. I., page 361), where the Lord Chief Justice made the Witness say what he wanted in this respect.

Dr. KENEALY: Yes, my lord; but, as the Attorney-General said, the Seminary is within the curtilage of the College—whatever he meant by that.

The LORD CHIEF JUSTICE: *Oh, dear no! it is an entirely different place.*

Dr. KENEALY: Father GUY could have told the Defendant all about it.

The LORD CHIEF JUSTICE: Is he a Stonyhurst man?

Dr. KENEALY: I don't know. I fancy that he is. But a Roman Catholic priest could have no more difficulty in finding out all about Stonyhurst than a Protestant clergyman would have in discovering all he wanted to know about Westminster School, or any college at Oxford. But I proceed. I assume—I have no proof of it, but I assume, and I ask you to assume—that when ROGER TICHBORNE came back in 1848 he was in the same condition of health as he was when he first entered Stonyhurst, and that he was summarily dismissed by the authorities.

The LORD CHIEF JUSTICE: *How do you get over the evidence which proves so strongly that he never did come back? Is there not convincing evidence of that?*

Dr. KENEALY: My lord, if we are to assume as convincing and as proved unanswerably, all that the Prosecution has put forward——

The LORD CHIEF JUSTICE: You may assume anything for the purposes of argument; but I must remind you that it is wholly against the evidence.

Dr. KENEALY: Of course, what I can prove I need not assume. I said I was in no condition to prove it.

The LORD CHIEF JUSTICE: *But there is convincing evidence the other way, and you must first displace that.* We know exactly where ROGER TICHBORNE was. His father had predetermined that he should not stay at the College after the first of August. Accordingly he left on the 1st of August; he went with his father abroad, and we can trace step by step the places they went to by the father's letters. When he came back in October, 1848, he went to Knoyle, and wrote thence to his mother. When, then, could he have been to Stonyhurst?

Dr. KENEALY: The Defendant said he was there for some days and was then expelled. Why should he invent that?

The LORD CHIEF JUSTICE: I know he did say so; but we have it in evidence that he left in August and travelled with his father on the Continent, and then that he wrote to his mother from Knoyle, stating that he never would go back.

Mr. TAYLOR (Juryman): The Rev. Father RIGBY stated that he had no illness at Stonyhurst.

Dr. KENEALY: No illness to his knowledge.

The LORD CHIEF JUSTICE: The infirmarian says he never had an illness.

Dr. KENEALY: As the Lord Chief Justice says, I admit that there is sworn evidence to contradict my Client's statements. If I am to accept all sworn evidence that contradicts his statements—which also are on oath—I may as well give up the Case.

The LORD CHIEF JUSTICE: No one says that: but the evidence must be grappled with.

Dr. KENEALY: I can only grapple with it by argument: after twenty years, with no facilities presented to me, I cannot grapple with it by proof. I am simply shewing to the Jury that what is sworn here is not unassailable. A great many reverends have been brought here, and have sworn, among other things, that there is no resemblance between ROGER TICHBORNE and the Defendant: and they believe him not to be the man. Their evidence therefore cannot be implicitly accepted, because if they are mistaken as to identity they may be mistaken in other respects: and the evidence which I have given in support of his identity seems to me to be overwhelming. It may be all very well for persons like the Rev. Mr. ETHERIDGE to pledge an oath that he is not ROGER TICHBORNE: but if such evidence as that is to be accepted as unanswerable, it seems to me to be that kind of justice which is called Jedburgh: which hangs a man first, and tries him afterwards.

Mr. TAYLOR (Juryman): We have not had the slightest evidence that ROGER TICHBORNE was ill at Stonyhurst.

Dr. KENEALY: You have his own sworn testimony at the first Trial, which, if he is ROGER, is worthy of deep consideration. If you have assumed him to be ORTON, it is of course worth nothing. But you are bound to ask yourself, Why should ORTON have invented such a piece of uselessness? And until you get a good answer, you ought not to be so confident of the truth of your assumption. Suppose he went back, as he may have done; I suppose the resolutions of Sir JAMES TICHBORNE are not like the laws of the Medes and Persians, which never changed.

The LORD CHIEF JUSTICE: The grandfather was in favour of his going into the army; but the father insisted on his remaining at Stonyhurst until August, 1848.

Dr. KENEALY: I am much obliged to your lordship. That is the resolution which Mr. JAMES TICHBORNE conveyed to Mr. SEYMOUR.

The LORD CHIEF JUSTICE: There is also a letter of Lady DOUGHTY to ROGER TICHBORNE in November, 1847, in which she reminds him that it is his last year at College, and exhorts him to make the most of it.

Dr. KENEALY: I can understand that letter to ROGER TICHBORNE being read, but I am surprised that Mr. SEYMOUR'S letter should have been admitted.

The LORD CHIEF JUSTICE: It is a letter that was read in the cross-examination of the Defendant.

Mr. Justice LUSH: No doubt there was some good reason or we should have excluded it.

Dr. KENEALY: At all events, there could have been no possible reason why the Defendant should swear persistently that he went back to Stonyhurst.

The LORD CHIEF JUSTICE: When you say "persistently" you should remember it was only in reply to Serjeant BALLANTINE when the cross-examination was over.

[Reference was made to the passage cited by the Lord Chief Justice, which appeared in page 1810 of the Defendant's Re-examination in the C. P. and was as follows:—

"You have spoken of some illness that you had. I do not want to go into details. Who were you attended by for that illness?—A doctor, one of the priests.

"The doctor was a priest?—Yes.

"And he attended you, did he?—Yes.

"*Without going at all into details, was any communication made to you after that illness?—Yes, there was.*

"How soon after that did you leave the College?—Within a month of that time.

"You left about a month afterwards?—Yes.

"*Had you intended to leave so soon, or was it intended that you should leave so soon?—It was not intended that I should leave so soon.*

"After you left Stonyhurst, did you keep up a communication with the masters or any of the pupils there?—No; none of them.

"And from the time you left Stonyhurst have you ever seen the place?—I have not.

"Have you ever been there?—I have never been nearer than Preston.

"I mean have you ever been in sight of it?—Not within miles of it.

"Then it is idle to ask you—you have never been to look at its locality, either to refresh your memory or to create a memory on the subject?—I have not.*]

Dr. KENEALY: Well, gentlemen, I maintain that I am perfectly justified in stating that when the Solicitor-General put certain questions he had information before him that ROGER TICHBORNE at some time suffered from disease at Stonyhurst. It was not a point brought out by the Plaintiff or his advisers, as my Lord Chief Justice supposes and says, it was brought out in cross-examination. This was put to him:—

"Had you disease?—Disease?

"Any complaint while you were there?

It is clear the Defendant understood the question. He declined to answer it. The Attorney-General went on—

"I am afraid I must ask you again?—What are you speaking of?

"I am speaking of the time you were at Stonyhurst?—I know that.

"Had you any illness while you were at Stonyhurst?—What time are you speaking of?

"Had you any illness during the time you were at Stonyhurst—any serious illness that confined you to your bed?—Yes; I was in bed a few days.

"What with?—I decline to answer the question.

"A few days?—Two or three days.

"What was the matter with you?—I was not well.

"You decline to answer."

The Defendant said—"You are alluding to 1869." And this mistake naturally caused some amusement.

"You left Stonyhurst in 1848, did you not?—No, the beginning of 1849. I forget whether it was 1848 or 1849."

Again the questions as to his illness were repeated. (Extract from notes quoted.) And again the then Plaintiff declined to answer. Here there were distinct occasions where the Solicitor-General, from instructions he had in his hand, cross-examined the Defendant as to a particular complaint or disease which he had at Stonyhurst. After that what do you care about the evidence of the infirmarian who swears that ROGER TICHBORNE never got any medicine.

The LORD CHIEF JUSTICE: *In 1848 he was bled.*

Dr. KENEALY: The Solicitor-General was too much a master of words to leave it to be understood that he referred to that. The language he used implied a particular thing as to which the Defendant declined to give an answer in a public Court; thus confirming my view that the Solicitor-General alluded to one particular disease and one alone. The Solicitor-General did not say, "I am not alluding to a disease of that nature. I am alluding to something else." But I submit that it is perfectly clear that from his instructions he was made fully aware of the nature of the disease from which ROGER TICHBORNE suffered at Stonyhurst. That at once explains "The Cottage," and gives a reason why he was summarily expelled from the College. You will remember that when asked why he left Stonyhurst he declined to answer. He was asked:

"What ground have you for objecting to answer the question?—Very strong grounds.

"What are they; you must state them?—I did not wish to stay any longer.

"Why should you object to answer the question if that was the reason?—I have many reasons.

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* See Vol. I. *Trial*, page 123.

"Have you other reasons?"

This clearly shows the Solicitor-General had in his mind those grounds I am putting to you. "I have a reason," said the Witness, "for not answering the question, and you know it as well as I do." Do you think a Witness would have said that if he had not felt that the Solicitor-General had in his hand a distinct and positive statement of the reason why he left Stonyhurst? The Witness distinctly charges the Solicitor-General with knowing as well as himself the reasons why he left Stonyhurst; and the Solicitor-General does not repudiate that knowledge.

Mr. Justice LUSH: He says, "you impute to me an amount of knowledge which I do not possess."

Dr. KENEALY: He adds, "I should like to acquire the amount of knowledge." Your lordship will see that his answer is a guarded one. He makes a general answer, which does not go to the extent of complete repudiation.

The LORD CHIEF JUSTICE: What could the Solicitor-General say?

Dr. KENEALY: If the Solicitor-General had meant to repudiate all knowledge of the subject he would have said so.

The LORD CHIEF JUSTICE: You mean he should have said "on that subject."

Dr. KENEALY: Certainly, if he meant to repudiate it. Whether he repudiated it or not is not of the least value; but what is apparent is that the Solicitor-General had instructions in his brief as to ROGER TICHBORNE having a certain disease, and that on this account he had to leave Stonyhurst. When the question was resumed by Serjeant BALLANTINE, the Defendant again said he did not want to go into details.

The LORD CHIEF JUSTICE: *He never said in the examination-in-chief that he left Stonyhurst in consequence of that.*

Dr. KENEALY: No, he would take the chance of not being asked. He would be a greater fool than I take him to be if he went voluntarily into statements of that kind. It could be well understood that a doctor, who was also a priest, attended him; and that he would not like the knowledge of such a thing to spread about Preston or elsewhere. And he states distinctly in Re-examination, that a communication was made to him after that illness; and he left a month after. Is it not clear why he left? When all this is weighed—the remarkable questions asked by the Solicitor-General, the remarkable answers given, and the facts stated in the Re-examination—it must be apparent that the Defendant had really the knowledge which he appeared to have, though he endeavoured as far as he could to avoid reviving the recollection of a discreditable scrape. The accounts would not be reopened on the day he returned, or not necessarily until the close of the year, and that might be taken as a satisfactory reason why there was no entry of it there. Certainly the authorities were not likely to send in an account to Mr. JAMES TICHBORNE for the few days that ROGER went back, especially when he had left under such distressing circumstances. Nobody can believe that; and in my judgment it explains all silence in the books produced. And I invite you to deduce from the evidence and from what I have said, that no man would have voluntarily put his hand into such a hornet's nest as this if he were not the real man, and if his story in this particular were not true.

[The Court then adjourned.]

On re-assembling, Dr. KENEALY resumed: The Stonyhurst disease—if I may call it so—is a thing on which he could not have been coached. And if such a circumstance were in the Solicitor-General's brief, as it must have been, and if the Defendant knew that he had so suffered, as he evidently did, here is the strongest possible proof that he must be ROGER TICHBORNE. ARTHUR ORTON could not have been coached up in that. No one could have known it but ROGER himself and the surgeon who attended him. It could not have been known to CARTER or M'CANN, or anyone else. If that view be correct, it furnishes a more remarkable evidence of the identity of the Defendant with TICHBORNE than even that matter of FRAZER'S snuff-box. There is hardly a stronger anchor in the Case than this—that he knew a thing which only could be known to ROGER TICHBORNE and the Stonyhurst authorities, who only let it out by a slip which they never intended to have made at all.

Gentlemen, I own I cannot understand this mystery about the cottages. Sir JOHN LAWSON produces a plan, on which they are not shewn—though we know that some music-masters lived in one of them; and those gentlemen may have been located there, to amuse the patients who were confined. This would be in accordance with the usual good management which characterizes all the educational movements of the Papal Church.

But let me pass on.

What, let me ask, are we to think of what has been pressed into this Case? We hear of the *Home News* and the *Illustrated News* of 1862 or 1863, of a very early date, to show that he might have coached himself up from them. Notwithstanding the remoteness of the chance of his seeing these publications, the Court overruled the objections made by me against them because he might have seen them. Surely if the Prosecution had a strong Case they would not have rested on such grounds as that. Lord TENTERDEN once decided that an advertisement inserted in a country newspaper was not evidence of a party having seen it unless it could be proved that the party took it in. Bearing in mind what Lord TENTERDEN said in that Case, and what was said as to the *Home News* in this, you will attach little importance to the latter, and will be able to dismiss it altogether from your minds. Here was this man out in Australia supposed to be continually studying these papers. If he did, he must have known something about the Tichborne estates. Instead of that, he appeared at Wagga-Wagga to be lamentably ignorant about them. If this man had studied both the *Home News* and the *Illustrated News*, he must have known that which he evidently did not know. Then it was said he studied "The Peerage and Baronetage" in Sydney.

The LORD CHIEF JUSTICE: He said so himself. He said he did not at Gravesend, but he saw one at Sydney.

Dr. KENEALY: He said he saw a "Peerage and Baronetage" at Sydney. A guilty man would not be likely to have made an admission of that kind.

Mr. Justice LUSH: It was in the former Trial Defendant said he saw the "Peerage" at Sydney.

Dr. KENEALY: It was opened in Mr. HAWKINS'S Speech at this Trial, where he said that at Gravesend the Defendant had furnished himself with a "Peerage and Baronetage," just as he had at Sydney.

The LORD CHIEF JUSTICE: You are quite right.

Dr. KENEALY: I am glad to have called your attention to it, because it is obvious the Bench were under a different impression. It is unfortunate, also, that Mr. HAWKINS having opened that, as he opened a great many other things, never adduced any proof. Defendant was supposed to have gained some extraordinary information from these publications, but there is no evidence of any such thing. The grand point is BOGLE. Whether BOGLE assisted innocently or wickedly was not stated. Certain reasons have been suggested why you should consider BOGLE an ignorant dupe. On the contrary, he is in full possesion of his faculties; he is one of the most favourable specimens of the African race that could well be presented to the Court. During the whole of his testimony I watched him, and you watched him, and you must say you never saw a man less likely to fall into the clutches of an artful impostor. I never knew a man who answered questions with greater shrewdness, and he was not at all likely to be a dupe. When he first met the Defendant in Australia, the Defendant, if he were an impostor, could have known hardly anything of the antecedents of ROGER TICHBORNE, and it is not pretended that he had any ground for knowledge except that contained in the *Home News* of 1863, the *Illustrated News*, and the "Peerage and Baronetage," which he may have never read, though he saw it. Therefore, if ARTHUR ORTON was at that time meditating an onslaught on the TICHBORNE property, he must have been almost without any information on the subject of the claim he was about to make, and indeed the information that had been given him was more likely to have deterred him than otherwise, because two persons more physically different than ROGER TICHBORNE, described in the advertisements as a thin young man of sallow complexion, and the man who presented himself to Mr. GIBBES as ROGER TICHBORNE could hardly be imagined; and how he could have persuaded BOGLE that he was ROGER TICHBORNE if he was the butcher, ORTON, is one of those mysteries which I cannot understand. I look upon it as out of the question to suppose that BOGLE could have been the dupe of the Defendant; and if you were in their company, and had five minutes' conversation with each, I feel confident you would agree with me, for you would find that the black man was not the least shrewd of the two. Then for BOGLE to be a willing partner in this fraud would have been for him to negative his whole life. Sir EDWARD DOUGHTY knew him from a very early period of his youth. He took a liking to him; he found him to be one of the most truthful and faithful servants he ever had: he trusted him as if all distinctions between them were removed, and he was his own flesh and blood. On his death-bed he desired his widow to pay him an annuity of £50 for the remainder of his days. Therefore BOGLE had every motive that could bind a man for continuing honest and true to the end of his life, as he undoubtedly had been up to a very late period in it. In Lady DOUGHTY'S deposition there is also a tribute to his honesty, and I put it to you whether a man, honest and faithful for so many years, is the one to become a party to a fraud such as this is alleged to be. Yet, if this man is an impostor, BOGLE must be either a dupe or a knave. As regards the dupe, it is sufficient that the black man is infinitely more clever than the white. What is alleged is that when the Defendant was with Mr. GIBBES trying to raise money from Mr. CUBITT, BOGLE was always at his side coaching him up in information as to ROGER TICHBORNE. Well, BOGLE was a younger and presumably an even smarter man than when we saw him in the Witness-box, and the Defendant could not have failed to learn from him. Did he do so? Why, instead of showing himself possessed of knowledge such as he might have got from BOGLE, he was constantly making the most stupid and gigantic blunders. He stated that he was a cornet in the 66th Dragoons——

The LORD CHIEF JUSTICE: That was before he saw BOGLE.

Dr. KENEALY: I am glad you have mentioned that, because BOGLE was opened as the person who had told him everything.

Mr. Justice MELLOR: That was not sworn to.

Dr. KENEALY: I refer to Mr. HAWKINS'S Speech.

Mr. Justice MELLOR: Oh! I have forgotten that. (Laughter.)

Mr. HAWKINS: I trust I will only have to refer to it to recall your lordship's recollection.

The LORD CHIEF JUSTICE: BOGLE only saw him a few days before he left Sydney.

Dr. KENEALY: You see, Gentlemen, how these things are dispelled the moment they are looked at. I have no doubt that up to this time most of you thought he met BOGLE at an early date.

Mr. Justice MELLOR: My recollection is that it was a few days before.

The LORD CHIEF JUSTICE: I do not think that BOGLE was brought into contact with GIBBES. GIBBES having got a statutory declaration went away, and I do not think that at that time BOGLE had been brought on the scene.

Dr. KENEALY: I am glad that has been stated, for, but for the interpellation of your lordship, the Jury might possibly have accepted the suggestion that he communicated to the Defendant all those things he stated to several persons in Australia as proof of his being TICHBORNE. BOGLE, I may remind you, was a sort of head domestic in the family of Sir EDWARD. He was frequently in the company of ROGER TICHBORNE, and was treated by him with great kindliness of feeling. There is something very attractive about the best specimens of the black race. History is full of examples which show that among no class more than them are there to be found finer specimens of men of honesty, truthfulness, and fidelity. I don't know whether any of you have read the "Key to Uncle TOM'S Cabin;" but, if you have, you will find some extraordinary instances of warm attachments existing between black and white individuals—and it can be easily understood how ROGER TICHBORNE would have the same feelings for BOGLE as are detailed in that book. As a matter of fact, BOGLE was frequently in his company, and must of necessity have known whether he was tattooed or not. You know that the Defendant is not, and never was tattooed; and BOGLE negatives the idea that ROGER TICHBORNE ever was tattooed. If ROGER TICHBORNE had been tattooed, the first thing BOGLE would have done—supposing him to have been coaching him, as is alleged—would have been to tell him to get tattooed; but this, as you know, he never did. I use the argument I have adduced as almost conclusive proof that ROGER TICHBORNE was not tattooed. It is given up that BOGLE could have coached him.

The LORD CHIEF JUSTICE: Up to that time.

Dr. KENEALY: Who, then, could have coached him or told him anything? The agents of the Prosecution, numerous as they are, and with such resources at command, might have got upon the track of someone who coached him; but as they have not been more successful, I think I may say that he was not coached. If the Defendant was coached, how is it, if he be the cunning knave represented, that he should have forgotten so much? If he was not coached, then we find that his memory is a blank as to certain circumstances of his life. He remembers nonsense, because at that period of his life he surrendered himself almost to the dominion of nonsense. He remembers the colour of horses and dogs and matters of that description; and one of the Witnesses referred to intrigues or meetings with servant-girls. This showed his frivolity. Anything intellectual that would lift him above a person of the lowest intelligence in the army it might be difficult to find. He was no doubt well qualified to be a member of the Snob Club, of which he was the "Vice-President." Probably there never was a name better applied than that which the club gave themselves. As to the evidence of M. D'ARANZA, I wish to say nothing against him; but he seemed to me to be a man likely to become the ready dupe of a clever priest. If I were a member of one of these orders, and wished to have a useful tool, I should work upon an honourable and honest man in preference to a knave, because I could always refer to his character as an indication of honour and right. A clever priest would seldom employ a knave, because that might prevent the completion of his project. I suggest that M. D'ARANZA is one of those people who could be easily led or talked over—who gives his evidence, as it appears to me, with perfect good faith, but whose evidence is not worthy of consideration. M. D'ARANZA has said that ROGER TICHBORNE looked a very healthy man, but the whole evidence of the Carabineers contradicts that, and we know that he was what may be called an invalid during the greater portion of his English life. If anything can be established by human testimony, it is that ROGER TICHBORNE was in-kneed, but we find M. D'ARANZA telling us that ROGER turned his feet a little inward—a thing wholly different from that which I have proved.

The LORD CHIEF JUSTICE: You remember what he said afterwards—that he meant in-kneed.

Dr. KENEALY: I did not take a note of that.

Mr. TAYLOR (a Juryman): I thought in your last Speech you described him as the most exemplary Witness in the whole Case.

Dr. KENEALY: Well, and I don't say one single word against him now. I wish I could speak as highly of all the other Witnesses in the Case as of him. I think he is a perfectly honest and honourable gentleman; but I look upon him at the same time as a weak man, and one easily influenced. He mentioned another circumstance, which I wish you to bear in mind, and which I think calculated to influence a man of weak mind. He said he always heard the family speak of ROGER as dead. That produced a great impression on him, and no doubt prepared him for that forgetfulness, or want of recognition, he exhibited when he saw the Defendant. If the family really thought that he was dead why was there no tablet to his memory in Tichborne Church among his ancestors? He and ROGER were great friends, and there is no doubt he must have seen the peculiarity in the knees of ROGER which so many Witnesses have spoken to, and it shows that he is a weak man that they so easily convinced him that it was only some slight peculiarity about the feet.

The LORD CHIEF JUSTICE: I have found the passage which I had in my mind. You asked him, "You were asked about this peculiarity. You say he turned his foot in?" and he said, "No; the foot, perhaps, more than the knee."

Dr. KENEALY: If it had been such a remarkable in-knee as the great preponderance of evidence showed; and if M. D'ARANZA has been persuaded to say that it was very slight, it shows great weakness. He and ROGER were represented as being intimate friends, and yet, during the whole of his intercourse with him, he never heard of a tattoo. I must ask whether it is possible or credible that M. D'ARANZA would not have known it; and I am sure from what you have heard that if ROGER had been tattooed, no one was more likely to know it than M. D'ARANZA. D'ARANZA is a perfectly honest man, and he cannot be persuaded by priestly or any other artifice to tell you things of which he has no knowledge.

The LORD CHIEF JUSTICE: He spoke from his own recollection, as I understood; and there was no suggestion that he had been in communication with anybody.

Dr. KENEALY: He says ROGER was the subject of conversation with him and others, and I think I am justified in arguing that he would be likely to be persuaded into taking particular views on certain matters.

The LORD CHIEF JUSTICE: Your Case is that he comes here to tell us what some designing priest has persuaded him to say?

Dr. KENEALY: Am I not entitled to argue that it is probable?

The LORD CHIEF JUSTICE: You must make your theory fit your facts, and not shape your facts by your theory.

Dr. KENEALY: When D'ARANZA gives such incorrect accounts of the personal appearance of ROGER TICHBORNE?

The LORD CHIEF JUSTICE: I perfectly agree that that is a very good ground for arguing that his recollection is not entitled to much weight.

Dr. KENEALY: Well, I think that I am entitled to use it in both ways.

The LORD CHIEF JUSTICE: I don't agree with you.

Dr. KENEALY: Well, we have D'ARANZA brought into communication with Mr. and Mrs. HIGGINS, and with the NANGLES, who are assuredly very important, and as it seems to me very virulent Witnesses in this Case. It certainly is new to me that I am not entitled to argue upon anything except what has been strictly proved in evidence.

The LORD CHIEF JUSTICE: I don't say that. I say that you are not entitled to make an imputation upon the credit of a Witness without having some foundation for it. I am afraid that you and I have widely different views upon that point.

Dr. KENEALY: Well, I suppose my view must be wrong, as it is not in accordance with your lordship's.

The LORD CHIEF JUSTICE: I don't say that, but I say you are bound to have some foundation before you make an attack on the reputation of a Witness.

Dr. KENEALY: I meant no such thing. I expressly guarded myself against being understood to be making any imputation on him.

The LORD CHIEF JUSTICE: You say that he was induced by designing priests to give something as his recollection which was not the production of his own mind.

Dr. KENEALY: I was saying something the very reverse of that, because my argument is that, while D'ARANZA was easily persuaded of different small things, such as the turning in of his feet and the colour of his eyes, yet he was far too honest and honourable a man to say he had seen tattoo marks when he knew he never had done so. It is not pretended that he exhibited any signs of being ashamed of the marks, for Mr. GERALD FITZGERALD tells us that on the second occasion of their meeting he showed them to him; and therefore it is perfectly absurd to pretend that he never showed the tattoo marks to D'ARANZA, his old friend, from any sense of shame. There is another little fact to which I will here allude in connection with the evidence of M. D'ARANZA. We heard a good deal about "The Garden of the Soul." The copy I produced was objected to because it had no date, but your lordship said that you had a copy with a date.

The LORD CHIEF JUSTICE: A lady sent me a copy which I think is dated 1850. It is an English edition, printed in France. I will bring it down.‡ It was, however, I believe, stated by

‡ He never did, though, the lady wrote to Dr. KENEALY stating that she had sent it to the Judge expressly for that purpose, but had never received it back.

In the *Daily Telegraph* of this day's Trial, the following note appears:—

"It is now surmised that the Witness LUIE is a ticket-of-leave man, who was discharged from Chatham on the 25th March last, after having served five and a-half years of a term of seven years' penal servitude. He had, it is said, also previously suffered several years' imprisonment, the offence in both instances being fraud. Nothing definite about his antecedents can be known, however, until to-day, when a warder from Chatham, who has been telegraphed for, will arrive for the purpose of identification. LUIE was again taken to Holloway prison yesterday."

some of the Witnesses that Lady TICHBORNE had a copy amongst her books.

Dr. KENEALY: M. D'ARANZA said that there were English books at Mr. JAMES TICHBORNE'S house in Paris; and who can entertain a doubt but that book was amongst them? It is true those French ecclesiastics said they never heard of such a work. And it is a work commonly in use by Roman Catholics. And if the Defendant is not ROGER TICHBORNE because he did not know what a seratile was, it is equally fair to say that these priests were not Catholics because they do not know "The Garden of the Soul." (Laughter.) I will now refer to the cross-examination of ROGER TICHBORNE by Mr. CHAPMAN BARBER, which his learned Leader described as "a savage cross-examination." (Laughter)

Mr. HAWKINS: Mr. CHAPMAN BARBER has forgiven me a long time ago. (Laughter.)

Dr. KENEALY: I refer to that for the purpose of showing that Lady TICHBORNE did not coach the Defendant. In answer to a question he said he had seen Mr. TALBOT CONSTABLE and a Spanish gentleman whose name he did not remember. He was pressed for the name, and the question was repeated some days after, but although Lady TICHBORNE knew that M. D'ARANZA must be referred to, she never appeared to have informed him, and he never appeared to have asked her, although they both knew the question was likely to be repeated. This, I think, is proof demonstrative that she was not in the habit of coaching him. The memory of ROGER TICHBORNE, as you have before heard, was a very bad one; and, amongst other things, he was very careless in the spelling of names. Although he had been residing in the house of M. CHATILLON, we find him spelling that gentleman's name in no less than three different ways; CHATILLON, CATILLON, and CHATILLION. Then you remember the mistake he made in writing "GLYMIE and Co." for "GLYNN and Co." and his spelling his brother's name "ALFRID." One of the points Mr. HAWKINS makes is that this man is an impostor because in one of his letters he writes Mr. BULPETT'S name "BULPIN," and Mr. HOPKINS, "HOPING," and LIPSCOMBE, "LISSOM;" but I think I have clearly shown that ROGER TICHBORNE was in the habit of making similar mistakes. In addition to the mis-spelling there is another peculiarity which ROGER and the Defendant have been proved to possess in common; I mean the MUNCHAUSEN style of telling stories. The statement, for example, that he had read the Greek Testament was perfectly absurd, because we know he never learned one word of Greek at Stonyhurst. If, however, he is the sort of man he is described as being, he would have fortified his statement by taking a few lessons in Greek, and a week would have sufficed to let him know the alphabet, which was really all that was required. He did not do that; but, on the contrary, treated the matter with extreme scorn. His ignorance as to Greek, however, is not so remarkable. Lord BELLEW, who was one of the philosophers at Stonyhurst, confessed that he knew nothing about even "Virgil," and showed that he knew very little about such a famous Englishman as OLIVER CROMWELL. Another example of the Defendant's extraordinary folly is furnished by the incident of his buying the Metropolitan Hotel, at Melbourne, for £10,000, and saying that, when he got his estates, he would come back and be an hotel-keeper.

The DEFENDANT: I did not say that. I never intended to keep the hotel myself. I never said I was going out again.

Dr. KENEALY: Very well. The bills which he gave in payment for the hotel came to England before the Defendant, and were dishonoured, and that must have been one of the reasons which disgusted his family.

The LORD CHIEF JUSTICE: Was there any evidence that they knew of that?

Dr. KENEALY: I did not ask the question, because the matter did not occur to my mind, but I should have thought it was one of those things which could not fail to be known. Now, Gentlemen, I have already called attention to the extraordinary stories he told Mr. GIBBES about the property, and I will not go over them again beyond saying that they are simply evidences of weakness. I use these things as demonstrative proof that he did not study these particular documents which were put before you as if he did study them. There is another matter to which I should like to call your attention, as another proof of the extraordinary conduct of the Defendant, and that is his having sent a silhouette likeness of Sir EDWARD DOUGHTY to Mr. COTTEE, and said, "When you look upon this you look upon me." There is not, as far as I can see, a particle of resemblance between that likeness and the Defendant, and that shows the absurdity of such a statement Gentlemen, Lady TICHBORNE seems to have hit upon the real reason why the Defendant, there as elsewhere, was guilty of those misstatements, because in one of the letters she wrote, she says, "I believe him to be rather giddy." There is another specimen of the random way in which he talks when he said there was another son, but that if he (the Defendant) died the estates would go to a cousin. That seems to me to be rather like the ravings of a lunatic than of a man in his sober senses Upon another occasion he told Mr. CUBITT that he was in the 66th Light Blues, and then directly afterwards he said he was in the 16th Dragoons. He does not seem really to have known or to have cared what he said to these people at that particular time, and I say that that very carelessness, heedlessness, and recklessness is inconsistent with that organised plan of conspiracy which he is supposed to have got up from communication with so many other people.

[The Court adjourned at five minutes to four o'clock.]

ONE HUNDRED AND THIRTY-FOURTH DAY.—THURSDAY, DECEMBER 4TH, 1873.

Dr. KENEALY: Gentlemen of the Jury, I told you on Tuesday that one of the chief features of the course pursued on the part of the Prosecution is the system of prejudging and of treating the various Witnesses who have presented themselves before you for the Defence with unmitigated contempt and insult. When my lord and other members of the Bench, to my amaze, challenged this statement, I promised to support it by chapter and verse, and I will now proceed to do so. Lord COKE speaks with great disapproval of such a mode of proceeding. Some words that I used yesterday brought a sort of reproof upon me from the Bench. If I thought my words would have given offence to fastidious ears I would not have used them, but would have followed the example of a polite parson, who, when the name of a certain personage occurred, used to describe him as "his Sulphurous Majesty." If I have occasion to refer to a certain region at any future time, I shall describe it as "sulphurous." Nevertheless, even Lord COKE does not disdain to make reference, in his pages, to the "damnable and damned proceedings of the Judge of Hell;" and I suppose it was not thought personal at the time. And the same great lawyer, as if in anticipation of the TICHBORNE Trial, strongly reproves the doctrine that a man should be treated as the Centurion treated St. Paul, who was first bound in chains and then questioned. His words are—

"The philosophical poet doth notably describe the damnable and damned proceedings of the Judge of Hell,

"'Gnosius hic Radamanthus habet durissima regna,
Castigatque, auditque dolos, subigitque fateri.'"

And in another place—

"leges fixit precio atque refixit."

"First he publisheth and then he heareth; and lastly compelleth to confess and make and mar laws at his pleasure; like as the Centurion in the holy history did to St. Paul. For the text saith:—'Centurio apprehendi Paulum jussit, et se catenis ligari et tunc interrogabat, quis fuisset, et quid fecisset,' but good judges and justices abhor these courses."

Lord COKE says that "good Justices avoid these courses," and I say that good Prosecutors avoid such courses. Those who prosecute simply represent the Crown, which looks upon all with equal eyes of justice. This system of abuse and insult is not peculiar to this Trial; it commenced at the Law Institution, where it was adopted by my friend Mr. CHAPMAN BARBER. The Defendant was examined about his wife and about his occupation in an offensive tone; and that style has been persistently followed since, with nearly all his Witnesses. I don't know that a man is less likely to be believed on his oath because he has formed an alliance beneath himself. There are noblemen and gentlemen, and even Queen's Counsel,* doing that almost every day; but I never knew before that it could be brought forward in a Court of Justice as a proof that they were swindlers, or perjurers, or impostors. On the first day of his Speech, Mr. HAWKINS adopted this style for the purpose apparently of frightening Witnesses from coming forward. A letter was read in which a passage occurred that referred to the fact that Mr. TALBOT CONSTABLE was going to be married to "a French girl," Mddle. DE GRAMMONT. There was no ground for reading such a passage, and I say it was read to deter Sir TALBOT CONSTABLE from appearing in this Court lest he should be called upon to answer questions about Mddle. DE GRAMMONT.

The LORD CHIEF JUSTICE: But why should Sir TALBOT CONSTABLE be so alarmed? DE GRAMMONT is one of the noblest names in France.†

Dr. KENEALY: Enough for me, my lord, it is, that he *was* alarmed. Again, before it was known whether we were going to call Mr. BAIGENT as a Witness, he was perpetually designated as a "one-eyed man," or "blind of one eye;" all very pleasant for a person who has to face the Prosecution. And then Mr. ALFRED SEYMOUR was asked a question which cannot have any-

* This allusion to Mr. HAWKINS, who married a common street-walker, caused great laughter among his friends on the front and back benches of the Court.

† COCKBURN knew perfectly well when he said this that the DE GRAMMONT whom Sir TALBOT married was only a *nom de guerre;* and that she did not belong to one of the "noblest families in France." Everybody knew all about the lady's antecedents; none better than the Judge, who pretended to be so very innocent. In fact, she was a second Mrs. HAWKINS. See Vol. VI. of this *Trial*, page 140.

thing to do with the Case. Mr. HAWKINS said, "Was he living with his wife?" meaning BAIGENT, and Mr. ALFRED SEYMOUR replied, "I am told not." "The Lord Chief Justice: Time enough for that when Mr. BAIGENT is called." Now that observation of the Lord Chief Justice will be echoed by every right-thinking man. I object, and call upon every right-minded person to join me in the objection, that that is not the proper style to adopt in a Court of Crimiosl Law, where the name of the Sovereign is adopted, and where the Sovereign is supposed to be the Prosecutor and present. How many Witnesses we have lost through this style of cross-examination it is impossible for me to guess. Very few people have hardihood or nerve enough to come forward in a Court of Justice, or would like to be put to the torture in this way, with regard to the past events of their lives. It seems to me that in this Case a most extraordinary power of nerve has been exhibited by a great many persons who have presented themselves before you, undeterred, very much to their honour, by threats or language of this description. They have not been frightened by the sharpening of SHYLOCK'S knife on the hearthstone for their lifeblood, but have come forward and acquitted themselves well in passing through the ordeal. I will now (as I have been challenged) refer to the way in which Mr. WAKELING was treated by Mr. HAWKINS. Mr. WAKELING * was almost driven out of this Court, as if he were labouring under a pestilential disease.

The LORD CHIEF JUSTICE: I forget what he was called upon to prove.

Dr. KENEALY: He was called to prove that he attended ARTHUR ORTON for the bite of a horse. Mr. HAWKINS asked him:—

"Have you been drinking this morning?—Yes, I had a cup of tea.

"Have you been drinking anything else?—I have not; that is, I have not been drinking any spirituous liquors.

"What have you had?—I had a glass of bitter.

"At what time do you take your glass of ale?"

All this was perfectly irrelevant, and could only have been done to insult the Witness. He is asked about some books that were burned. He had a number of rubbishing old books which were of no use to anyone, and he and his wife having had a quarrel, in his anger he burned those books. That appears to me to be a thing of which no one need be ashamed, and yet Mr. HAWKINS goes on to ask him questions about it, after which he interrogates him about his wife. "Is she living with you now? Was she in St. George's workhouse?" Here is a man coming forward to swear to a certain occasion on which he attended ARTHUR ORTON, and we hear him questioned as to his habits of drinking in the morning, and as to his wife and family, and all his domestic proceedings. Whether that is necessary it is for you to say. It is not because a man comes forward to swear to a matter of that nature that such questions should be put to him.

DR. JOHNSON IN HIS STUDY.

Gentlemen, another of those persons who was treated with insult in this way, and without any necessity at all as far as I can see, was Mr. BARLOW,† a Witness respecting whom they complained that they got no notice. You will see that a want of notice to the Crown, or rather to the Prosecution—for I won't identify the Crown with the Prosecution—by no means implies that they are in want of information. Certainly, with their army of Detectives I should not wonder if they knew everything ascertainable about all my Witnesses. He was asked whether he had not lived in Abbey-gardens, and what rent he paid for his rooms. Next he was asked, "Have you ever represented yourself as being a Mormon in any way?" as if that had anything to do with, or any possible bearing upon, this Case. The next question is, "What were you doing at Utah city?" to which the Witness replied, "Surveying the silver mines of BRIGHAM YOUNG." I will pass no comment upon this particular style of interrogation. I shall leave it to yourselves to form your own opinion upon it. Now we come to Captain BROWN.‡ He was asked how many children he had, and he replied three. Then he was asked whether he took them with him. Gentlemen, fancy a married man taking his three young children with him to sea! The implication was—the suggestion to you meant—that he had deserted his wife and family: a suggestion without basis, and positively false. Then he was asked what they were doing whilst he was away, and the Lord Chief Justice interposed with the remark that the question was ambiguous. Mr. HAWKINS says:—"On your oath, did you not leave them destitute?" and the Witness replied, after an intimation from the Lord Chief Justice that that might have occurred from his inability to act in any other manner, that that was so, and that he sent all the money which he possibly could for their support. Then Mrs. MARY ANN NEALE,* formerly a barmaid at Melksham, and now a respectable married woman, was treated in Bartholomew-fair style by Mr. HAWKINS. She was called to depose that she saw ROGER TICHBORNE on one occasion in a room in his shirt-sleeves washing his hands; upon which Mr. HAWKINS asked, "Perhaps you can tell me what trousers he was wearing, or if he was wearing any trousers at all, or breeches, or gaiters?" You will remember the shouts of laughter which arose upon that, and which were certainly calculated to disconcert the Witness. You will remember how the Witness took it, and that she replied, "I suppose he would not be without them." Then Mr. HAWKINS said, "I did not put it

* See Mr. WAKELING'S evidence, *Trial*, Vol. IV. pp. 343-346.
† See Mr. BARLOW'S evidence, *Trial*, Vol. V. pp. 188-191.
‡ See BROWN'S evidence, *Trial*, Vol. VI. pp. 113-147

* See MARY ANN NEALE'S evidence, *Trial*, Vol. V. pp. 165-173.

in that way." Certainly not, after the shouts of laughter and the disconcerting of the Witness. The bursts of laughter which were elicited by these things have not presented themselves to the Court under so serious an aspect as they have presented themselves to me, or the Court says it would not have tolerated them; nor did the other jocularities, and what I may call buffooneries and scurrilities connected with the examination of other Witnesses present themselves to the Court in the same way that they presented themselves to me.

The LORD CHIEF JUSTICE: What other buffooneries?

Dr. KENEALY: My lord, their name is legion. I have not made a list of them.

Mr. Justice MELLOR: *Occasional buffoonery is rather lively, and is not objectionable if not carried too far!!!*

Dr. KENEALY: I don't object to a little fun if it is not calculated to disconcert the Witness, but my Witnesses have been frightened away from Westminster Hall by conduct such as this.

The LORD CHIEF JUSTICE: If a Witness is examined in a light, pleasant tone, and with a little banter or jocularity, no harm may be done by it. I quite agree with you, Dr. KENEALY, that if buffoonery is resorted to for the purpose of disconcerting a Witness, that is very improper, and it is the duty of the Court to interpose; but I must say that I don't recollect a case of that kind in this Trial.

DR. KENEALY: What I have said is exactly in accordance with some remarks made on the same subject by one of your lordship's predecessors on that bench. Sir HENRY CHAMEY in his *Antiquities of Hertfordshire*, speaking of a former Chief Justice of this Court, Sir FRANCIS PEMBERTON, says: "He would not suffer any lawyers upon Trials before him, *to interrupt, or banter Witnesses in their evidence; a practice too frequently used by some Counsel in bad causes, to trifle with and obstruct justice;* but allowed every person liberty to recollect his thoughts and to speak without fear, that the truth might be the better discovered" (p. 466). So that this Chief Justice did not permit even "banter;" he certainly would not have allowed buffoonery.

The LORD CHIEF JUSTICE: Perfectly right.

Dr. KENEALY: I myself do not object to harmless pleasantry, but in this Trial there have been systematic banter and bullying, and brow-beating, and all the low artifice of nisi-prius tricks calculated to disturb that equanimity which is necessary in the witness-box. These were not all the arts that were resorted to; there is hardly a quibble or a quiddity that we have not had. For instance, when I proposed to put in the handwriting of BYRON to show how different it was at different times of his life, that was objected to and excluded.

Mr. Justice MELLOR: Lord Chief Justice WILDE lays it down that it is the duty of the Court not to allow evidence to be given which is not legally admissible.

The LORD CHIEF JUSTICE: If we were to admit such extraneous matters they would be quoted hereafter as a precedent, and the administration of justice would be impeded. I agree, however, that when no great principle is involved, and no objection is raised by the other side, the Courts should construe the law of evidence liberally.

Dr. KENEALY: I do not dispute that in strict law it was perhaps—I only say perhaps—not admissible. We are reading every day strictures in the newspapers on our proceedings. In this Case I do not suppose any great injury would have been inflicted if such slight concessions had been made as the granting permission to produce pictorial sketches of Dr. JOHNSON at different periods of his life. During the Prosecution, I was compelled to be constantly on the watch as to what was to be introduced; and I have sometimes thought that I resembled ROBINSON CRUSOE, who is drawn with a gun on each shoulder, so necessary was it for him to be continually prepared. If ever it was thought that I was napping, or was not most vigilantly on the alert, some objectionable device was resorted to, and some illegal act attempted. Gentlemen, I may possibly be told that Mr. HAWKINS only did to those Witnesses what I did to some of his. The only two Witnesses whom I am conscious of having attacked with anything like asperity were not persons who were called to speak to any minor portions of the Case, but persons upon whose evidence to a very great extent the Case depended. Lord BELLEW came here to swear that he had himself tattooed ROGER TICHBORNE. Nothing can be more painful or disagreeable to Counsel than to rake up the private life of any person. Necessity, however, sometimes compels him to do so; and I felt it absolutely necessary for me to show that the man who had come forward to give evidence on a vital and crucial part of this Case, was a man whose antecedents had been such, and whose treachery and falsehood had been so great, that he ought not to be believed when speaking on his oath. Mr. GOSFORD was also a Witness of vital importance. There is no man who, if he could be believed, could give better evidence as regards the identity of the Defendant with Mr. ROGER TICHBORNE than Mr. GOSFORD; there has been no more important Witness; and therefore it was necessary for me to show by acts and by facts that he was a man who was unworthy of credit; because, although he is a free man in this Court he is free in circumstances under which many men have been transported. Mr. GOSFORD has been guilty of embezzlement to the amount of £8,000 or £9,000, and having been unfaithful to those who reposed trust in him, he is not worthy of belief as a Witness. Those are the only two Witnesses for the Prosecution whom I treated with anything like hostility, and in their case I was impelled to do so by an absolute sense of the duty which I owed to the Defendant. You will remember that in the case of Lady RADCLIFFE I was so delicate that I intentionally declined to ask her a single question on the grand point at issue between us. I asked her about her walks, and about her visits with the Defendant, but I carefully forbore from wounding her feelings by any pointed allusion, or any allusion at all, at what was said to have occurred. As regards my former address to the Court, I may remark that I don't believe any Counsel ever stood up to speak in Westminster Hall so imperfectly and miserably instructed as I was, or so utterly without assistance. I alluded to Miss HALES without censure; and I most cautiously forbore—and I would take the liberty of calling your lordship's attention to this fact—I most cautiously forbore from entering into the Lady RADCLIFFE question in my Speech.

The LORD CHIEF JUSTICE: You must not appeal to me.

Dr. KENEALY: I thought when I looked at your lordship that you sanctioned what I was saying on that point.

The LORD CHIEF JUSTICE: I have expressed no opinion one way or the other. I did not intend to express any opinion.

Dr. KENEALY: Gentlemen, I thought what I said met with my lord's approval. I am sure you will bear in mind that not one of Mr. HAWKINS's Witnesses was treated by me during my cross-examination of them with contempt or ridicule. I had no personal feeling against either of the two Witnesses to whom I have just alluded. I never saw them before, and shall probably never see them again; but considering what part they were to take in this Case it was of the greatest importance that I should show you what those men were. Mr. BAIGENT is one of those persons who were so scornfully alluded to by Mr. HAWKINS; and his name having been so frequently mentioned I may tell you in anticipation what is my answer to the question that will be asked, why I did not call Mr. BAIGENT. Gentlemen, my simple answer to that question is that I did not, and do not, require Mr. BAIGENT. If I had been conscious in myself that my Case must fall without Mr. BAIGENT I would have called him, and subjected him to the same kind of terror and alarm, and ridicule, and insult in cross-examination to which others have been subjected; I would have exposed him to all those nice questions about his one eye and his wife, which would no doubt have been put to him. But I did not want him. That man is a bad architect who, having completed his edifice, adds to it a single stone; and I don't want one addition to my edifice. If you do not believe the Witnesses that I have called, the Carabineers and the cohort of humble friends and followers of ROGER TICHBORNE, I am quite certain that you would not believe them because Mr. BAIGENT was added. If the means of identification which those numerous Witnesses have had have not established to your satisfaction that the Defendant is ROGER TICHBORNE, undoubtedly Mr. BAIGENT'S evidence would not convince you. Gentlemen, if you do not believe my Case as it stands, you would not believe it though I brought an angel from heaven to support it; if you do not believe my Case as it is presented to you, you would not believe it if I could by some supernatural means bring the weeping phantom of Lady TICHBORNE herself to assure you of its truth. And therefore I do not call, because I do not want, Mr. BAIGENT. If you disregard the Witnesses I have called, you would certainly have disregarded him; but I believe that when you take a review of this Case, when you consider all its details apart from any prejudice and apart from the opinions of such persons as I have referred to, you will find it impossible to disregard the evidence of that powerful body of Witnesses whom I have placed before you—evidence of such force that perhaps none equally powerful was ever presented to a Jury before. Although some persons may go about bragging and boasting that they have got your verdict in their pocket, and that they know the result, and that that result will be the conviction of the Defendant notwithstanding the evidence of my 250 Witnesses, yet I believe those persons will find themselves mistaken. They do not calculate the comprehensive power of the evidence for the Defence, and I believe they are, to use a common phrase, reckoning without their host. Gentlemen, amid such a mass of evidence as has been presented, it is impossible but that there should be some mistakes; it is impossible but that there should be some blots and specks; it is impossible that among such a vast number of people some should not have exhibited themselves under a darkened aspect; but I believe it is equally impossible that with such a "cloud of Witnesses" any conclusion can ever be arrived at except that which I hope to receive at your hands, notwithstanding the braggadocio style and predictions and the surmises of persons who ought to know better—persons of learning, persons of great talent, persons of great power on the press. I believe they will be deceived and disappointed.

The LORD CHIEF JUSTICE: I did not catch your last words.

Dr. KENEALY: I was saying, my lord, that "persons of learning, persons of talent, persons of power in the press, they will all be deceived, they will all be disappointed."

The LORD CHIEF JUSTICE: Oh!

Dr. KENEALY: I hope your lordship finds no fault with that.

The LORD CHIEF JUSTICE: Oh, dear no; only I did not hear your last words. But I regret that there should be any occasion for an observation evidently directed against those who are conducting this Prosecution, to the effect that they have the verdict of the Jury in their pocket.

Dr. KENEALY: There is such a paragraph in one of the papers

this morning, and certainly if I had been the most degraded wretch, using the worst possible language, the paragraph could not have been more insulting nor more false.

Mr. HAWKINS: I think I ought not to sit here and hear these observations made. It is an unwarranted statement, and is as unfounded in fact as any statement I ever heard in the course of my life. No human being, to my knowledge, has uttered one single expression which can justify such a statement.

Dr. KENEALY: Gentlemen, you have heard Mr. HAWKINS's denial. I shall simply treat it with silence.

Mr. HAWKINS: I protest, my lord, against these statements being made without any foundation. They are mere assertions, calculated, I was going to say, to give pain. I wish I could feel that they were not directed to the Jury for the mere purpose of insult. I must protest against these observations being made to the Jury without a particle of evidence to support them.

Dr. KENEALY: Gentlemen, we are living in a world in which we all mix and move, and you must know and probably will form your own opinions whether what I have said is true or not.

The LORD CHIEF JUSTICE: But I think you should confine your observations to what is in evidence before the Jury, and not introduce extraneous matters. If you say such things as you have done, it will be open to Mr. HAWKINS to say similar things, and the result will be to infuse additional acrimony into the Trial, and to bring in matters which are not before the Jury, and of which they can have no means of judging.

Mr. HAWKINS: My lord, you need not be afraid of my following the example.

Mr. Justice LUSH: I am quite sure, Dr. KENEALY, you may trust to the Jury, who are too sensible and right-minded to be influenced by anyone.

Dr. KENEALY: I know that. I hope that.

Mr. Justice LUSH: But what you have said does imply that the Jury are capable of being influenced.

Mr. TAYLOR (Juryman): It must have the contrary effect.

Mr. Justice MELLOR: I can only say if any one has attempted to influence the Jury in the manner suggested, let his conduct be brought under the notice of the Court, and we will deal with it, whoever the person may be.

A JURYMAN: My lord, such a thing has been done.*

The LORD CHIEF JUSTICE: I am very sorry to hear it.

Dr. KENEALY: I will now pass from that, Gentlemen, and call your attention to the sentiments expressed by two learned Judges soon after the passing of the Act which gives the Prosecuting Counsel the right of reply. "I hope," says Justice CROMPTON, "that in the exercise of the privilege granted by the New Act to Counsel for the Prosecution of summing-up the evidence, they will not cease to remember that Counsel for the Prosecution in such cases are to regard themselves as Ministers of Justice, and not to struggle for a conviction as in a Case at Nisi Prius; nor be betrayed by feelings of professional rivalry—to regard the question at issue as one of professional superiority, and a contest for skill and pre-eminence. It is to be feared that under the new Act, Juries are in danger of being led away to give verdicts rather under the influence of feelings excited by the speeches on one side or the other than in accordance with the evidence" (REG. *v.* PUDDICK, 4 FOSTER and F. 499). Mr. Justice BLACKBURN has also said: "But if the practice was to regard the summing-up by the Prosecuting Counsel as a duty, the cause that obtained at Nisi Prius, which was a contest between party and party, might creep in, and the Prosecuting Counsel in a Criminal Case, forgetting that he himself was a kind of Minister of Justice, might at the end of his Case make an urgent appeal to the Jury, and make himself a mere partisan. In that case it would be a positive duty and necessity for the Judge, instead of regarding the Counsel for the Prosecution as assisting him, to watch and see that there was no unfair advantage taken by him *to catch a verdict apart from the merits*" (REG *v.* BERENS, 4 FORSTER and F. 856). Gentlemen, I implore of you to bear these grave observations in memory. Those two Judges were evidently apprehensive that there was a danger that the Prosecuting Counsel would not act in that spirit; and that they were right in their apprehension has been abundantly proved in this Case. Let me refer to a portion of the examination by Mr. HAWKINS. In the examination of Mr. ALFRED SEYMOUR, Mr. HAWKINS showed rather more of the zeal of Counsel at Nisi Prius than of the quasi-judicial spirit proper for the Prosecution in a Criminal Trial. There was evidence of a very important character which must have been known to the Prosecution, and which ought to have been known to the Counsel for the Prosecution. One of the facts upon which we relied was the shattered condition of the Defendant's brain. Now, it was notorious in the family that he had fallen down a flight of stairs in Paris; but it was not until the Lord Chief Justice had interfered that I was able to get out the fact from Mr. ALFRED SEYMOUR.† With reference to the insults which have been offered to my Witnesses, the peculiar tactics of which I complain were commenced at a very early period: insult and delay have been among their chief artifices. From the very first the whole object seems to have been delay. The Defendant came home from the Colonies in 1866, but it was not until 1871-2 that he was able to bring his Case before a Court of Justice. The "law's delay" has passed into a proverb. It has always been regarded as one of those things which called loudly for reform; and if ever there was an instance in which the law's delay was prejudicial to a man's cause it has been this.

The LORD CHIEF JUSTICE: But was the delay the fault of the law? I suppose that if the Case had been ready it might have been tried long since. I must remind you that in this matter there has already been an immense reform; and there is not now much delay except where a Case of this kind takes up the time of a Court for months together. No doubt there has been delay in this suit, but it arose from the fact that it was necessary to take evidence in Chili and Australia. If it had not been for these things the action of ejectment might have been tried within twelve months after the Defendant's return to England. You see he was the *dominus litis*, and it rested with him to take the necessary steps for carrying forward the Case.

Mr. Justice LUSH: It is the suitors that have been delayed by this cause who, it seems to me, will have most cause to complain of "the law's delay." (A laugh.) *

Mr. HAWKINS: My learned friend Mr. CHAPMAN BARBER tells me that in the Court of Chancery the Case was taken out of its order as being a "short cause." (Loud laughter.)

The LORD CHIEF JUSTICE: Well, in the Court of Chancery it was a short cause, for it was only a process to enable the action of ejectment to be brought to issue. But what I want to say is that it would be a terrible reproach to English jurisprudence to say that a man's cause was delayed five or six years through any fault of the law itself.

Mr. HAWKINS: I may mention as another unavoidable reason for the delay that some of the Witnesses—and most important Witnesses too—were shut up in Paris during the siege.

Dr. KENEALY: They might have come out in a balloon, like GAMBETTA.

The LORD CHIEF JUSTICE: I do not seek in any way to diminish the force of the argument that the Defendant has suffered from the delay which has, from whatever cause, occurred; but still I am anxious, for the honour of our law, which after all has for a very great number of years answered its purpose extremely well, to save it from the reproach which the learned Counsel seemed to cast upon it.

Dr. KENEALY: My lord, I do not think that the delay has occurred through the fault of the Defendant.

The LORD CHIEF JUSTICE: Nor do I. My observation applied generally to the steps taken by the parties. All I was anxious about was to protect the administration of justice from reproach.

Dr. KENEALY: I shall by-and-bye have to bring forward my theory of the cause of this delay, and then you will probably look upon the Case in quite a new light; but whether caused by accident or by the artifices and intrigues of others, this delay has had a ruinous tendency to exhaust the Defendant's friends and funds. Law is one of the costliest of luxuries, and long before the action of ejectment was tried £37,000 had been swallowed up—in what I know not—and the Defendant was driven into the Bankruptcy Court. The Defendant, therefore, has received no benefit from the delay; and I may possibly place before you some reasons for thinking that his enemies should be held responsible for it. In the meantime I appeal to you to make allowance for him, and to remember the essential advantages which he has lost in the death of Lady TICHBORNE and other persons who could have given most important evidence in his behalf. I think I may assume that if Lady TICHBORNE had been living, and they had called, not eighteen, but eighteen thousand Witnesses, they would not have been able to get over the effect of a Mother's evidence upon the Jury. In addition to this, Witnesses have their memories affected by the lapse of time; and others, under the influence of prejudice, withdraw from him. Still I am hopeful of the result, when you come to contemplate this man's Case as a whole, if you will only take the trouble. I am sorry to say that that trouble will not be slight; but I feel that in such a Case you will think no pains too great. You will ask yourselves, "If this Case had been tried earlier, would the Defendant have been able to give us more satisfactory evidence?" Take, for instance, what is called the Brighton card-case. I am painfully aware that the evidence I have been able to give is of the slightest possible value; but ask this: If you had yourselves been concerned in such a matter twenty years ago, how on earth could you have proved the facts? Some of the parties might have died; but even if not, do you think it would have been easy to get any of the confederates to come forward? Would not Mr. HAWKINS have immediately got up and asked how such a scoundrel as he had admitted himself to be dared to enter the box, and confess that he had joined in pigeoning a young gentleman who was probably not in the full possession of his faculties? Would not the learned Counsel have said that such a Witness was not to be believed upon his oath? and would not his argument have been a good one? Such a case could hardly be known, except by hearsay, to innocent people, and the months of those innocent people are closed by the rules of evidence. If the Case had been tried when the matter was fresh, Lady TICHBORNE could have told us whether she had not begged or

* But why did he not enquire into it, as MELLOR had just suggested?

† See Mr. ALFRED SEYMOUR's Cross-examination, *Trial*, Vol. II., page 14.

* Observe how this Judge endeavours to turn off the edge of the complaint, by a dull and pointless attempt at a joke: which of course caused "laughter."

borrowed money to relieve her son from his difficulties; or she might, perhaps, have been in personal communication with the parties. But at the end of twenty years what can I do? Still, are you to conclude from the absence of proof that the Defendant is therefore not ROGER TICHBORNE? Such an argument could not be seriously urged. It is very true that Mr. ALFRED SEYMOUR and other gentlemen have said that they never knew of the affair. Very likely not; but what does that prove? Only this, that it was wrapped up in secrecy, and known only to mother and son. Again, after long delay, people's memory of dates will fail; and the great point in this Case has been dates, dates, dates. If a Witness says he saw ROGER TICHBORNE five-and-twenty years ago, he is confronted with the fact that ROGER TICHBORNE was at that time somewhere else, and he is sent down from the box in disgrace. I suppose that most of you recollect seeing the Duke of WELLINGTON for the first time. You remember him well; his features are indelibly impressed in your memory; and yet would you not consider it very hard if Mr. HAWKINS were to insist on your telling him the precise year when you first saw the Duke?

The LORD CHIEF JUSTICE: I think there is a clear distinction to be observed in this matter. It seems to me that when a Witness is speaking of having seen a particular person on a given day or occasion, if the date is not of the essence of the inquiry, it would be unreasonable to expect accuracy twenty or thirty years afterwards upon that point. But when the date is of the essence of the inquiry, it is legitimate to point out that the Witness cannot possibly be right, because the man was somewhere else; and that, therefore, if he saw him at all it must have been on another occasion.

Dr KENEALY: There are some Witnesses—as, for instance, Mrs BURT—with respect to whom dates are important; but, for the most part, it is the fact spoken to and not the date. If any of you were put into the box, and cross-examined as to the dates of events which have happened in your lives, you might make a lamentable failure. Dates have been made so much of in this Case that I must call your attention to one or two words from 'TAYLOR on Evidence':—

"But though a Witness in general must depose to such *facts* as are within his own knowledge, the law does not require him to speak with such expression of *certainty* as to exclude all doubt in his mind. For whatever may be the nature of the subject, if the Witness has any personal recollection of the facts under investigation, he may express it, as it lies in his memory, and leave the Jury to judge of its weight." (Part III. Chapter iii. section 1272). The important thing was the fact. I remember as well as possible first seeing the late Sir ROBERT PEEL, but if I were placed upon the rack I could not tell you when it was. So I remember seeing the Duke of WELLINGTON riding down Whitehall, but I have not the least notion of the year. I have forgotten the date. Yet Witnesses have been treated by the Counsel for the Prosecution as if their evidence was not worthy of a moment's consideration because of some miserable mistake about a date. I do not regard myself as an illiterate person, but I could not pretend to be certain on such points. What, then, must be the case of persons who are illiterate, and who speak in the excitement and confusion of having to give their evidence in the face of hundreds of eager listeners, and with reporters ready to catch every word that falls from them and to publish it to the world? The grand and essential thing that you will have to consider is—Did the Witnesses see ROGER TICHBORNE or did they not? If you think they did see him I must beg leave to ask you to dismiss all other considerations from your mind. You must judge of the truth of their statements apart from the date; and if you believe those statements to be true, rely upon them and ignore dates altogether. Again, where there is such a mass of evidence there must be an immense amount of discrepancy. With the help of his index-markers, whose services I cordially envy him, Mr. HAWKINS will no doubt be able to bring before you a large number of contradictions; but discrepancies, so far from being evidence of falsehood, are often an indication of truth. Wherever there is an organized plot the conspirators will generally agree upon their story, and stick to it through thick and thin; so that the discrepancies which naturally arise amongst a great number of miscellaneous Witnesses are a great proof of bona fides. This was the argument of PALEY with respect to the differences which undoubtedly exist between the Gospels.

"When we open these ancient volumes," says the Archdeacon, "we discover in them marvels of truth, whether we consider each in itself, or collate them with one another. The writers certainly knew something of what they were writing about, for they manifest an acquaintance with local circumstances, with the history and usages of the times, which could only belong to an inhabitant of that country, living in that age. In every narrative we perceive simplicity and undesignedness; the air and the language of reality. When we compare the different narratives together, *we find them so varying as to repel all suspicion of confederacy*; so agreeing under this variety, as to show that the accounts had one real transaction for their common foundation; *often attributing different actions and discourses to the persons whose history—or rather memoirs of whose history—they profess to relate*; yet actions and discourses so similar as very much to bespeak the same character; which is a coincidence, that, in such writers as they were, could only be the consequence of their writing from fact, and not from imagination." (*Evidences*, Part III., chapter viii.)

In the same well-known work, we read, in Part III., chapter i., as follows:—"I know not a more rash or unphilosophical conduct of the understanding, than to reject the substance of a story, by reason of some diversity in the circumstances with which it is related. The usual character of human testimony is substantial truth under circumstantial variety. This is what the daily experience of courts of justice teaches. When accounts of a transaction come from the mouths of different Witnesses, it is seldom that it is not possible to pick out apparent or real inconsistencies between them. These inconsistencies are studiously displayed by an adverse pleader, but oftentimes with little impression upon the minds of the Judges. On the contrary, a close and minute agreement induces the suspicion of confederacy and fraud. When written histories touch upon the same scenes of action, the comparison almost always affords ground for a like reflection. Numerous, and sometimes important, variations present themselves; not seldom also, absolute and final contradictions; yet neither one nor the other are deemed sufficient to shake the credibility of the main fact. The embassy of the Jews to deprecate the execution of Claudian's order to place his statue in their temple, Philo places in harvest, Josephus in seed-time; both contemporary writers. No reader is led by this inconsistency to doubt whether such an embassy was sent, or whether such an order was given. Our own history supplies examples of the same kind. In the account of the Marquis of ARGYLE's death, in the reign of CHARLES the Second, we have a very remarkable contradiction. Lord CLARENDON relates that he was condemned to be hanged, which was performed the same day; on the contrary, BURNET, WOODRAN, HEATH, ECHARD, concur in stating that he was beheaded, and that he was condemned upon the Saturday and executed upon the Monday. Was any reader of English History ever sceptic enough to raise from hence a question whether the Marquis of ARGYLE was executed or not? Yet this ought to be left in uncertainty, according to the principles upon which the Christian history has sometimes been attacked. Dr. MIDDLETON contended that the different hours of the day assigned to the crucifixion of CHRIST, by JOHN, and by the other Evangelists did not admit of the reconcilement which learned men had proposed, and then concludes the discussion with this hard remark: 'We must be forced, with several of the critics, to leave the difficulty just as we found it, chargeable with all the consequences of manifest inconsistency.' But what are these consequences? By no means the discrediting of the history as to the principal fact by a repugnancy (even supposing that repugnancy not to be resolvable into different modes of computation) in the time of the day in which it is said to have taken place."

The LORD CHIEF JUSTICE: The authors to whom reference is made were speaking, not from their own knowledge, but upon hearsay. If they had applied to the proper officer in Scotland he could have given them certain information.

Dr. KENEALY: Gentlemen, I begin to fear that the Prosecution do not intend henceforward to print our proceedings from day to day. I think that that will be a great misfortune, for I apprehend that it would be most important to have a record of such arguments as may be offered to the Jury. If the resolution of the Treasury has been taken on the ground of economy, I cannot help thinking that that economy is a very short-sighted one. And I make this observation now, because I think it would have been useful to you, if, before this Trial comes to an end, you could have refreshed your memories with the actual words which I have here cited from Archdeacon PALEY. TAYLOR in his work on Evidence, continues in the same strain. In Part I., Chapter iv., Section 51, we read thus: "A third ground of the credibility of evidence is afforded by the exercise of our reason upon the effect of coincidences in the testimony of independent Witnesses. These coincidences when sufficiently numerous, and presented to us in the shape of undesigned correspondence, or incidental allusion, necessarily produce a prodigious effect in enforcing belief; because if the Witnesses had concerted a plot, the coincidences would almost inevitably have been commuted by cross-examination into contradictions, and if collusion is excluded and no deception has been practised on the Witnesses, the harmony in their evidence cannot be explained upon any other hypothesis than that the statements severally made are true. Each Witness taken singly may be notorious for lying; but the chances against their all agreeing by accident in the same lie may be so great as to render the agreement morally impossible. On this subject it has been profoundly remarked that in a number of concurrent testimonies where there has been no previous concert, there is a probability distinct from that which may be termed the sum of the probabilities resulting from the testimony of the Witnesses, a probability which would remain, even though the Witnesses were of such a character as to merit no faith at all. This probability arises purely from the concurrence itself. That such a concurrence should spring from chance, is as one to infinite; that is, in other words, morally impossible. If, therefore, concert be excluded, there remains no cause, but the reality of the fact."

Now, gentlemen, the way in which I use this paragraph is this: that although certain discrepancies may exist in the accounts given of ROGER TICHBORNE, those discrepancies are a strong evidence of truth, and that there has been no collusion. Upon the question of forgetfulness, we have had some curious instances in

which gentlemen of great intellectual power exhibited the very same defects as my own humble Witnesses displayed. Thus, Sir WILLIAM FERGUSSON actually forgot which of the Defendant's legs he examined. There is another instance which I have perhaps no right to mention; but, if I have not, I am sure my lord will forgive me. It is that, although Dr. WILSON distinctly recollected attending the Lord Chief Justice in 1837 or 1838, my lord himself has entirely forgotten it. *

The LORD CHIEF JUSTICE: It was not so long ago as that. It was when I lived in Eccleston-Square. I believe it was for a sore throat or something of that kind, but it is quite true that I have forgotten it as completely as if it had never taken place. †

Dr. KENEALY: It does show how persons of great intellect and memory forget things.

The LORD CHIEF JUSTICE: You must not say that, for I have a very bad memory.

Dr. KENEALY: Then your lordship will take it that I am referring to Sir W. FERGUSSON only (laughter). Another instance of that forgetfulness in great minds is that MOORE, in his life of BYRON, did not remember in which of Lord BYRON's legs the lameness existed, and he could not do so until he hit upon the expedient that Lord BYRON was lame on a particular side of the kerbstone as he left his club. There is a remarkable instance of forgetfulness. Here also I call your attention to a singular thing—namely, a characteristic which I say the Defendant has derived from Lady TICHBORNE—namely, inaccuracy and shortness of memory. Lady TICHBORNE absolutely makes a mistake in the age of her son. She says in her advertisement in 1865 that he was 32 years of age, whereas we know he was only 30 years of age at that time.

The LORD CHIEF JUSTICE: And what is more surprising, she says that his hair was a very light brown.

Dr. KENEALY: Yes, my lord, and Mr. ALFRED SEYMOUR said that "ROGER TICHBORNE'S hair was darker than mine," and his was nearly black. That is a most extraordinary discrepancy between the uncle and the mother. Probably you will pay as much attention to the "light brown" of Lady TICHBORNE as to the "black" of Mr. ALFRED SEYMOUR. Then, in one of the letters she writes to CUBITT—nobody supposes that she would tell lies—she says, "Being of very delicate health, he was kept at home until he was 15 or 16 years old." That is a mistake. Then she says, "He remained at Stonyhurst about three and a half years." That is another mistake. "He was in the Carabineers a year and a half;" another mistake. "He left the Dragoon Guards because he was still very delicate, and afraid his regiment would be sent to India." Quite a mistake; exactly the reverse being the fact. "When ROGER went into the army he was 19 years of age." Another mistake. All the foregoing mistakes occur in one letter. This poor lady was inaccurate just as I say that her son was inaccurate. How often do we find hereditary transmission of failings from mother to son; and I look upon it as a strong and powerful point in my favour that this lady whom I assert to be the mother of the Defendant, should be inaccurate, reckless, and careless in the matter of dates and facts, which are apparent in the letter from which I have just quoted? We have had numbers of Defendant's letters produced and their inaccuracies pointed out. We have had eight letters supposed to have emanated from ARTHUR ORTON, and they have not pointed out a single inaccuracy. I consider it a great point in my favour that the same class of errors are found in Lady TICHBORNE'S letters, and in those of the gentleman I am defending. Yet, according to Mr. HAWKINS, mistakes of this sort indicate perjury and imposture. I admit the inaccuracy with which the Defendant's letters teem; but the Prosecution have not attempted to point out any errors in the eight which are attributed to ARTHUR ORTON, thereby showing a perfectly distinct class of mind in the two men. There is another part of this Case which I hope you will bear in mind as unfair to the Defendant, and that is the extraordinary length at which his Witnesses were Cross-examined. Their Cross-examinations, too, were conducted in such a way as to excite a great deal of laughter; and laughter, you know, is one of the greatest enemies to the calm investigation of truth. Anyone with the smallest degree of cleverness can easily raise a laugh, and the ridicule is remembered when the truth is forgotten.

The LORD CHIEF JUSTICE:

"Ridentem dicere verum quid vetat?"

Dr. KENEALY: I have the greatest respect for HORACE, but I doubt whether he was speaking seriously in that verse. I admit the power which Mr. HAWKINS possesses in the way of jovial cross-examination, but I have always exhibited in my countenance the annoyance I felt at attempts to distract the calm attention of the Jury from the evidence by filling the Court with an atmosphere of gibes and jokes, some not very good or very new. There is something remarkable in the enduring vitality of an old jest. I recognised in many that we have lately heard very old friends that used to delight me when I read Joe Miller. They succeeded, however, in raising a laugh as well as if they had been perfectly fresh, and this no doubt produced all the effect which the "resurrection man" desired. Serjeant PARRY did not greatly distinguish himself in that matter; but then he did not cross-examine any very large number of the Witnesses. I must ask you to winnow away Mr. HAWKINS's superabundant chaff from the evidence, and I have my doubts whether you will find much wheat left. One would have expected that the representative of the Attorney-General would have shown greater dignity and decorum in the conduct of the case; but probably he was anxious to outshine his principal, and to be addressed with an

"O matre pulchrâ filia pulchrior!"

He was always pretending that he was going to get some terrible thing out of the Witnessea. He was always saying in solemn tones to the Witnesses—"Now, be careful!" "Now, be cautious!" "Now, reflect before you answer!" and so on. Everybody was struck with the idea that he was about to get out some awful admission. It was the perfection of acting. But it mostly happened that after the mountain had gone on a long while grumbling and thundering, there emerged only a mouse of the most ridiculous form. (Laughter.) Another great disadvantage under which the Defendant has laboured, has been that Witnesses have been brought to swear against him who were under no regard to the penal consequences of giving false testimony, and in whose case we could only trust to their moral sense. I refer to such Witnesses as HOPWOOD, MINA JURY, the MACALISTERS, and DONNA HAYLEY and others, who came from "Nowhere Else," and who have probably gone back to "No Man's Land." I might have evidence against them of the strongest kind—mind, I am not saying that I have, I only say I might have—and it would not be of the least use, for they have gone out of the jurisdiction.

The LORD CHIEF JUSTICE: You might have asked to have Witnesses recalled if you had desired it.

Dr. KENEALY: I had enormous difficulty in getting GIBBES. I had no encouragement to get any Witnessea recalled.

The LORD CHIEF JUSTICE: You had HOPWOOD back.

Dr. KENEALY: Yes, and it cost me £10.

Mr. HAWKINS: REDMAN, the Witness fram Nowhere Else, is in service in London.

Dr. KENEALY: So Mr. HAWKINS chooses to say, but we have no knowledge of it as a fact.

Mr. Justice MELLOR: There is no rule on the subject that is absolutely inflexible. We must do what is in the interest of truth and justice.

Mr. HAWKINS: GIBBES was called back at the instance of your lordship.

Dr. KENEALY: GIBBES was positively refused to us.

The LORD CHIEF JUSTICE: You could not help yourself. They called him back, and then I said you might put any questions you wished.

Dr. KENEALY: I understood he was called back by your lordship.

Mr. HAWKINS: Your lordship desired that GIBBES should attend. I asked your lordship to put a question about the telegrams.

The LORD CHIEF JUSTICE: I told you to put the question yourself in order that Dr. KENEALY might have the opportunity of cross-examining.*

Dr. KENEALY: At all events there are difficulties in getting Witnesses back who live in this country, and as regards those who live abroad the difficulty is unconquerable. But the Treasury is very sparing with its money. Complaints were made day by day, and instead of our having the Witnesses here from day to day as JEAN LUIE was had here, all Mr. HAWKINS's foreign Witnesses have flown, so that if we had the most important testimony with regard to them we are precluded from offering it. Considering the lavish sums which the Treasury have been spending, it would not have been of much consequence to have kept these persons here during the remainder of the Trial, but having had them they seemed nervously anxious to get rid of them.

Mr. Justice LUSH: They had all been examined in Australia, and Cross-examined by Defendant's Counsel. That was the case with every one.

Mr. HAWKINS: Every one.

Dr. KENEALY: If they had been examined before a Magistrate everybody would have known who was coming; whereas, when they are examined by Commission no one knows who is coming. They are not bound to call them, or even to account for them, as they would have been in the other case.

The LORD CHIEF JUSTICE: When they did come here you knew exactly what they were going to say, and if you had asked that they might be kept I certainly should have told Mr. HAWKINS that he was bound to keep them.

Dr. KENEALY: Mr. HAWKINS might have said, as he did in HOPWOOD'S case, that he had no power to keep them. But let me put to your lordship what I will call a hypothetical case. Witnesses examined under Commission are not known by the general public, and it is impossible to get at their antecedents for purposes of Cross-examination.

* See Vol. VI., page 338.

† It is believed that Dr. WILSON attended the Chief Justice *for more than a year;* and for something very much more serious than sore throat.

* This was positively false, as the reader will see, on referring to GIBBES'S evidence when re-called the fourth time. The Court had refused permission to Dr. KENEALY to recall him. It re-called him for its own purposes; and Mr. HAWKINS having inadvertently put one question, the L. C. J., apparently in a pet, informed the Doctor that he might *then* cross-examine. See *Trial*, Vol. II., page 408.

The LORD CHIEF JUSTICE: But you were represented by persons on the spot, and Counsel went out for you.

Dr. KENEALY: It was in 1868 that the Commission went out to Australia. A great many things happen in two or three years. If those Witnesses had been examined in England their evidence would have been known to all, and anyone who knew anything about them would have communicated with the Defendant, but when they are examined on Commission no one knows anything respecting them; so that the worst Witnesses, from being thus unknown, may get off without their acts being known, or challenged.

Mr. HAWKINS: Nearly the whole of the evidence of the Australian Commission was read by the Attorney-General and published.

Dr. KENEALY: I have already said that I never could get a copy of that speech, so as to read it. And I have no time to do so during this Trial.

Mr. Justice LUSH: I understand that what Dr. KENEALY has said is only a hypothetical grievance.

Dr. KENEALY: Your lordship knows I should not be justified in putting it otherwise: but I might put it, as being the positive fact here.

The LORD CHIEF JUSTICE: It is one of those inconvenient things that occur when we do not know whether you have evidence or not.

Dr. KENEALY: If your lordship puts that question to me, on my own responsibility I will give you a very speedy answer—that it is an inconvenience, and one which has been vitally injurious here. Witnesses come and go before it is known at the place from whence they came what they have said, and we have no materials for their cross-examination. They may be the greatest rogues on earth—persons whom no one could trust—but we are deprived of the means of knowledge. If you, in your verdict, should come to a conclusion adverse to the Defendant, I hope that the course adopted at the previous Trial will not be adopted with reference to one of my Witnesses, but that the old-fashioned English course of sending him before a Magistrate will be adopted. In commenting on the extraordinary parsimony the Treasury is showing, it is obvious how grievously that parsimony is injurious to the Defendant, because it prevents you from refreshing your memories with the arguments which I am putting before you day by day. On the other hand, as in the case of the GOSFORD correspondence, the Prosecution spared no pains or expense in printing and furnishing you with whatever could be injurious to the Defendant. They have printed whole volumes of letters, yet when I asked for one of those copies, printed at the public expense, and which would have thrown great light on the whole life of ROGER TICHBORNE, I was refused. Why was that, if they wished to be just? In a publication called *Junius* there is a cartoon in which Justice is represented as being excluded from Westminster Hall, but according to Mr. HAWKINS nowhere else is Justice so surely found. Why on earth, having printed those documents, if they desire the world to believe that this is a fair and just cause, why should we not have the advantage of them? How do I know that there are not matters contained or referred to in them which, if I had them, would do the greatest possible good to the man whose cause I represent? There is an old saying, older perhaps than HOMER himself, viz., "When the wolves wanted to destroy the sheep, they went and persuaded them to give up their dogs." And when the wolves of this Prosecution wanted to destroy the Defendant, they got him to deliver up every paper and document of his own and Lady TICHBORNE'S, and he, like a fool, as he always has been, was so weak as to comply. Mr. HAWKINS has them there, and for the life of him he won't let me have one glance at them. I don't know that I should have said this but for the extraordinary self-praise, the amazing self-glorification, which the Prosecution has continually trumpeted forth. Whenever anything has been said having reference to the Prosecution, Mr. HAWKINS has jumped up, and with the most apparent candour, with the most honourable expression and ingenious look has said, "Of course, my lord, the Prosecution only wish to do justice, the Prosecution only desire the most perfect justice. We are perfect models of Justice; perfect mirrors of fair Prosecutors, my lord." (Laughter.) Well, I ask these models of justice to let me have a look at these documents, but I may as well ask an adamantine rock. (Laughter.) One would have thought that, having all these means and appliances before them, they would have been extremely modest, or at least moderate in their views, yet no one has been more censured than I have been for not having stated in my Opening Speech all the evidence that I was going to produce. I was under no legal obligation to do so. If I had, it might have been said that I was precluded from producing anything which I had not opened. Living as I have been, in the matter of evidence, from hand to mouth, I was disinclined to state what evidence I had to produce until I was sure that there would be money to bring forward the Witnesses. There was no certainty that they could be brought to town; there was no certainty about anything. Everyone knows that, in point of fact, I had no instructions. Besides, up to the last moment, Witnesses came forward of whom we had little or no information ourselves. Therefore I think it was rather hard that I should be complained of in these respects. There was another reason why I was anxious not to further prolong the length of my Speech, and that was, that a very powerful effect had been produced on your minds by the evidence for the Prosecution; and I was anxious to meet that before it was fixed on your ideas to an extent that I might be unable to eradicate. That, therefore, was an additional reason why I was desirous to meet their case at once by evidence. I am not sorry that I adopted that course. It has, I believe, been of advantage to the man I represent and to you; and it was with great satisfaction I saw, as I did, from day to day that the Jury were by no means sure that the case for the Prosecution was of that strong and unassailable character which for a considerable period it might have appeared to be.

The Court adjourned for luncheon. On reassembling,

Mr. HAWKINS rose and said: Would your lordship permit me to make an application to the Court for an order to be conveyed to the Governor of Holloway Prison to bring up to-morrow morning JEAN LUIE, who is at present confined there? The affidavit states that in the course of yesterday and this morning——

The LORD CHIEF JUSTICE: Whose affidavit is it?

Mr. HAWKINS: Mr. STEPHENSON'S, who states——

Dr. KENEALY: Is this an application that ought to be made to the Judges now in open Court so as to prejudice the minds of the Jury?

The LORD CHIEF JUSTICE: It might be made in our private room.

Mr. HAWKINS: I have not stated anything that would prejudice——

The LORD CHIEF JUSTICE: You had better stop, Mr. HAWKINS.

Mr. HAWKINS: I will hand up the affidavit to your lordships.

[The affidavit was handed up to their lordships.]

The LORD CHIEF JUSTICE: Very well.

Mr. HAWKINS: Will your lordship allow that to be done at once, as I wish to give notice to the other side of Witnesses I am about to call.

The LORD CHIEF JUSTICE: Then come and make the application at once.

(Their lordships then withdrew from the Bench to their private room, followed by Mr. J. C. MATHEW on the part of the Prosecution, Mr. J. J. COOPER-WYLD for the Defence, and by Mr. STEPHENSON, Assistant-Solicitor to the Treasury.

The proceedings were conducted in private.

After an absence of twenty minutes' duration the parties returned to the Court.)

The LORD CHIEF JUSTICE informed the Jury that they need not assemble on the morrow morning till half-past ten o'clock, as an adjourned application would occupy the Judges in Chambers until that hour.

Dr. KENEALY (resuming his Speech): I was speaking of the complaints and censures which have been cast, or rather hurled upon us, for certain "surprises" which we have caused to these very innocent persons, the Prosecutors in this Case. Not content with their questionable proceedings to secure a verdict, they have made a grand discovery. "Oh!" they cry out, "what a designing and subtle Counsel not to have opened the whole of LUIE'S evidence! We were taken by surprise. The Counsel for the Prosecution, the agents of the Treasury, have been misled. They were harmlessly asleep, and have been caught napping. You have led us poor sheep into a trap. You have adopted a Jesuitical mode of action. You have taken a lesson out of our own book." Now I confess that if there is anything in the whole Case of which my learned friends and myself have reason to be proud, it is, that we did not open that part of the evidence. Do not imagine that I am afraid of LUIE'S evidence—and I will tell you why. Do not think for a single moment that I am alarmed because of these numerous things that are floating in the air, and going the round of all the newspapers. I will tell you at once why I did not open his evidence. JEAN LUIE, as you know, came upon us quite by surprise. He seemed to drop from the clouds. I don't mean to suggest to you that his evidence did not fill us with astonishment. Well, what did we do? We did that which we were bound to do for our own safety, and also in our duty to justice and to the Defendant. We asked a gentleman of high position to go to America to make search there and to investigate every single circumstance of the story that was narrated to us by him. I mention Mr. WHALLEY'S name, because Mr. WHALLEY undertook that expedition, and you heard from his own evidence what he had done in the matter. He sacrificed his time, his labours, and his money, and went there to ascertain whether this man LUIE was worthy of belief or not, because we were determined not to call evidence till we knew whether it was reliable. While he was away my Speech was on. I appeal to every man of honour whether I was not perfectly right; and whether anything could be more unjust or cruel than to twit me with having "surprised" them?

Mr. Justice LUSH: Did you say you were speaking when Mr. WHALLEY left?

Dr. KENEALY: I think so, my lord. I began my speech on Tuesday, July 22nd, and Mr. WHALLEY did not set sail until some days after. He arrived at New York on Wednesday, August 6th.

Mr Justice LUSH: And LUIE was called after he came back?

Dr. KENEALY: Yes; and after his full Report had been made, and well considered. So that you see the "surprise" so loudly complained of is got rid of like a great many other of their

imaginary grievances. I hope in this we exercised a wise discretion. That was the reason why I did not open LUIE'S evidence to you. And I do not mean to abandon one word of it. They may charge against him what they like. We see in their newspapers what wonders they are going to perform. He may have committed any number of offences; and yet it will not follow that his statements as to what occurred in 1854 are untrue. I do not deny that such evidence would tend against that reliance which we might otherwise put upon him; nevertheless, I am not in the least alarmed at the astonishing things that are threatened; and of the innumerable crimes of which, according to their newspapers, they are ready to prove him guilty. He may have, for aught I know, be charged with having committed murder—yet that charge would not establish that what he has related about the 'Osprey' is false. That I, and everyone connected with this Defence had unbounded faith in him, is proved by the course that we have taken. We may have been all wrong. I know nothing of LUIE'S antecedents. I have read what has appeared in the various journals, and for the sake of argument—though I am by no means satisfied that it is true—I will take it all against myself. All that I care for is this: Is his story about the 'Osprey' true?—and I hope I shall be able to show you that it is true, by testimony altogether independent of his. It was only after full consideration and patient inquiry that we accepted his story. I shall have to consider the evidence of LUIE by-and-bye; and in connection therewith I shall have to refer to the testimony of Mr. PURCELL, and to contrast it with the negative evidence of Mr. WHALLEY; and it will be my painful duty to ask you to disbelieve Mr. PURCELL, and to believe Mr. WHALLEY. All these thunders looming in the distant atmosphere, and all these dark fogs and mists that hang about, give me no apprehension. Let that be clearly understood. Here, only a few minutes ago, we have had Mr. HAWKINS rising up, and as if it were a matter of course, in no wise irregular, attempting to prejudice you by a motion on the subject of LUIE made in open Court. The Court did not interfere, and I was obliged to call its attention to the impropriety, when the Court immediately admitted it! Was this fair? Was this right? Yet let no one think that I dread all this unfairness. Let no man imagine that my Case is weakened by that Witness. I am addressing twelve men who I hope have the spirit of Englishmen; who have seen many phases of life, and who can form an opinion upon what is right and wrong in a great public Prosecution. When I come to comment upon LUIE'S testimony I will ask you to believe all of it, so far as relates to the 'Osprey' of 1854. That story has not sprung up now for the first time. Many years ago—long before LUIE was ever dreamed of—Lady TICHBORNE announced to everybody that tidings had reached her that survivors of the 'Bella' had landed in Melbourne. This, therefore, is not a new theory invented for the sake of this Defence, or of the rights of this man. It is a theory almost cotemporaneous with the loss of the 'Bella.' If it were new, you might say that it was a myth, got up for the occasion. But it is not so. Tidings of the arrival of survivors reached Lady TICHBORNE long years ago; and if she is to be believed—and I should like to know who dares to distrust her?—we must accept that evidence.

The LORD CHIEF JUSTICE: Did she say "tidings?"

Dr. KENEALY: She did not use the actual word.

The LORD CHIEF JUSTICE: I thing she only spoke of a report.

Dr. KENEALY: A report is tidings.

Mr. Justice LUSH: She says she heard that some of the crew were saved.

Dr. KENEALY: There is no doubt that she heard, and what is more, that she believed it; because it is in evidence that she communicated her belief and her grounds for it to the ARUNDEL family, when her son ALFRED was going to form a matrimonial alliance with a member of that house.

The LORD CHIEF JUSTICE: *Where does that appear?—I think it is in a statement of the Defendant, but nowhere else!!!* *

Dr. KENEALY: I think it is in the deposition of Lady TICHBORNE herself, which has been read; but I will look for the reference, and let your lordship know. We know, however, that she fully believed in the report, as is shown by her conduct in advertising through Australia.

The LORD CHIEF JUSTICE: No doubt; and there is a letter to a gentleman in Australia, in which she refers to it.

Dr. KENEALY: I am obliged to your lordship. No human being can seriously question that she had heard it; her conduct proved that she believed it. This story therefore of the 'Osprey' is no invention of yesterday; it went back to the days of Lady TICHBORNE herself. She was, as it were, the first promoter of the story. Therefore, I can only treat with scorn all suggestions of "surprise." In the words of TACITUS, I may say: "*De isto indignandum est, non respondendum.*" "Indignation shall be my only answer." In thus referring to the charges made against LUIE, I am proceeding on the supposition that the newspaper paragraphs are correct. Even if they are, there will be this material difference between us and the Prosecution: we produced a man upon whom we did not know that there rested a single blemish; but they produced their forgeries knowing that they were forgeries. Whatever on the score of blame attaches to us—if anything *does* attach to us—may be that of our indiscretion; but theirs was downright complicity in guilt, because they produced forged documents which they had been "convinced" (to repeat Mr. CHABOT'S word) were forged, and forged to defeat the ends of justice. These, therefore, are very nice persons to complain of being taken by surprise. But wherein were they surprised? They have known of every Witness that we had, or that we were about to call. The name of their Detectives was legion. We never yet have had an opportunity of learning the exact number of Detectives that are employed in this Case. We have had inklings only. Three at least have been mentioned; but whether the number is three, or extends to a regiment of thirty-three, we have no means of knowing, for not one of those respectable gentlemen has appeared in the box. Nay, more—though challenged over and over again to produce Mr. BOWKER, who could have given us some trustworthy information on this point—they did not favour us with his presence in the box. Mr. CULLINGTON again, who figured so prominently at Gravesend, who was here every day, generally before us, and about whom I may have some remarks to offer on a future occasion, could have given us some curious details as to the employment of these persons, and perhaps also upon a variety of other matters, but he did not oblige us with his evidence either. Under these circumstances, with all these Detectives burrowing and ferretting about in all directions, how could I have given notice of what all my Witnesses were going to say? In the first place, I myself did not positively know; and in the second, if I had known, would it have been prudent to do so? Here is a game for £25,000 a-year being played. It would not be an unwise expenditure of money to distribute £100,000 so as to secure it—only four years' purchase. This £25,000 per annum may be expected very shortly to become £50,000; and perhaps before the century closes it may not be far from £100,000 a year, as the London leases fall in. With such a stake, and with such enormous inducements to win that stake, I ask you seriously whether, after what we have witnessed, it would have been discreet in me to expose all, or any of my Witnesses to the dangers that might follow their being made known to the other side? The race of the ANNESLEYS—the race of unjust and unprincipled uncles and perhaps aunts—may not have wholly passed away from the earth. I should be hardly justified in supposing that they exist only as fossils. ANNESLEY, the uncle, offered £10,000 for the destruction of his own nephew—his brother's true son and heir. Men like him exist, and I fear always will exist, where splendid prizes are to be gained. Not satisfied with kidnapping his nephew—poor lad—a lad of nine—and selling him as a slave, he wished and wanted to destroy him when he came back from exile to claim his rights. Sadly may we lament that men commit such crimes for a brief and temporary possession of gold; but, unfortunately, there are fools ready to imperil their immortal souls, and their existence in a future life of happiness; who care not for the future, and who live only for the present: and whose machinations are to be dreaded and avoided like those of some furious but cunning wild beast. These persons have in this Case brought forward a class of Witnesses who never would have come but for what they consider good reasons. You cannot persuade me that Lord BELLEW came into this Court and swore as he did without certain good reasons. Why did he come? Why, truly? There I am beaten. That I cannot understand. But he surely had his good reasons for doing so. If they could get a man in that position to come into the witness-box and swear to tattoo marks, which, after what you have heard, every man among you must now be convinced never existed, does it not show that the race of the ANNESLEYS is not extinct? If they compounded GOSFORD'S felonies, what will they not do?

The LORD CHIEF JUSTICE: Really that is too bad. You have no right to speak like that.

Dr. KENEALY: What?

The LORD CHIEF JUSTICE: To call it felony.

Dr. KENEALY: I call it felony for a servant to use his master's money for his own purposes without having the means of replacing it.

Mr. Justice MELLOR: There is not a particle of evidence to show that Mr. GOSFORD did anything wrong!!!

Dr. KENEALY: I call it felony.

The LORD CHIEF JUSTICE: *You may call it what you please, but I say it is not felony.*

Mr. Justice LUSH: If I were trying a Case like the one in question, I would tell the Jury that there was no evidence of felony.

The LORD CHIEF JUSTICE: Nor no justice for it.

Dr. KENEALY: I cannot withdraw my words. I look upon his conduct in a most grave and serious light.

Mr. Justice MELLOR: Grave and serious is one thing; but felony is another, and I am shocked to hear you repeat it, because there is no foundation for it.

Dr. KENEALY: I have explained to the Jury what I think. If a man spends his master's money, *for his own profits*, whether it is in improving the farm (as GOSFORD pretends) or in speculating on a race at the Derby, it is much about the same thing. It is a bad species of embezzlement. I should say it was felony.

The LORD CHIEF JUSTICE: This is a case where the Steward holds money in his hands, and invests a considerable amount, which he is unable to realize, and I don't think you are justified in calling it felony.

* Another of the usual false suggestions of the Chief Justice; not to be attributed to want of memory, for his memory is almost a wonder. The statement appears in Lady TICHBORNE'S Deposition in Chancery, paragraph 17, which is printed in the *Introduction to Trial*, page 26.

Dr. KENEALY: Of course if we are to take and implicitly rely upon GOSFORD'S own explanation——

The LORD CHIEF JUSTICE: What other evidence have we?

Dr. KENEALY: My lord, we have common sense. I do not accept his explanation, and I am entitled to comment upon the facts as proved. There are a great many things which I may use by way of argument which I may not be able in strictness to prove. I say that morally, if not legally, GOSFORD'S conduct amounts to felony.

The LORD CHIEF JUSTICE: But you should have evidence when you hurl charges of felony against a man.

Dr. KENEALY: My lord, I submit that his own evidence of his own acts is enough. After what your lordships have said, I am bound to concede here that it may not be legal felony—but between legal and moral felony I confess I see no wide distinction.

The LORD CHIEF JUSTICE: That, of course, you are entitled to say; but by-and-bye I shall point out what I think are the merits of the Case, on the one side and the other.

Dr. KENEALY: Your lordship, I have no doubt, will do so. Gentlemen, after what my lord has said, you will take it that GOSFORD'S acts do not amount to legal felony. But in my judgment they are moral felony; and I can hardly see a shade of difference between them; and although he might escape by the technicalities of the law, there is hardly an honest man who heard of the circumstances that would not be sorry if the law was not strong enough to grapple with an offender of that kind, who, to all intents and purposes, had been guilty of either felony or embezzlement. But no steps have been taken against GOSFORD. Whatever his deeds may have been, it is clear that they have been condoned. Then they produce DONNA HAYLEY, for whose evidence they have paid a large sum: they put up Mrs. MINA JURY, who gets, or is promised, £500. What cannot be done with Witnesses of that description, for moneys to that amount? Did anybody ever hear until this Trial that largesse to that extent was given to Witnesses? And if they were ready to pay those sums to their own Witnesses, what would they not pay to get our Witnesses away from us?

Mr. HAWKINS: I protest against that.

The LORD CHIEF JUSTICE: *It is a downright outrage, not only on propriety, but on decency.* You bring these charges against these people without a tittle of evidence. The sense of pain which these sweeping accusations cause me is more than I can express. Everybody is supposed to be mixed up in some hideous system of corruption.

Dr. KENEALY: My lord, I do suppose it: and I have always supposed it from the very birth of this Case: but I have not given expression to my feelings until now, when I will not restrain them, after the shameful way in which nearly all my Witnesses have been treated. What else can I suppose or expect but "corruption" from the concoctors and users of the PITTENDREIGH Forgeries?

The LORD CHIEF JUSTICE: Are we never to lose sight of them?

Dr. KENEALY: Never, I hope; at least, until this Case comes to an end.

Mr. Justice LUSH: They were not produced in this Case at all. When Mr. HAWKINS produced them, he said they were not genuine;* and were only produced because they were put in at the last Trial.

Dr. KENEALY: My lord, that is not so. Your lordship is referring to what should have been said, but not what was done. If you will refer back to the evidence, you will see that it was not until the Lord Chief Justice interfered that Mr. HAWKINS withdrew them.

The LORD CHIEF JUSTICE: Two of the letters were genuine, and two were Forgeries of the PITTENDREIGHS to get money from the Defendant; but as to saying that because the PITTENDREIGHS tried this trick upon the Defendant we are to assume without any other foundation that your Witnesses have been bribed to keep them out of the way, nothing can be more monstrous. †

Dr. KENEALY: My lord, I did not assume or allege that they had done so. I intimated that they might be deemed capable of it. The PITTENDREIGH Forgeries were not, as your lordship fancies, fabricated for the sole purpose of getting money from the Defendant. The Defendant never saw the Forgeries until they were put into his hand at the first Trial. They were fabricated by the wife of PITTENDREIGH, the confidential clerk, as he was called, of Mr. DOBINSON, the lawyer for the family. Mr. DOBINSON, before he put them into the hands of his Counsel, was *convinced* by Mr. CHABOT that they were forgeries, and yet they were produced at the Trial, and put into the hands of the Claimant as if they had been genuine.

Mr. Justice MELLOR: All I can say is, that these PITTENDREIGH Forgeries are not in this Case at all.

Dr. KENEALY: My lord, with submission, I say that they are a material feature in it.

Mr. Justice MELLOR: I say, that they were read at the last Trial, and that is the only way this Court came to any knowledge of them.

The LORD CHIEF JUSTICE: The Claimant admitted that two of them were genuine.

Dr. KENEALY: These Forgeries should never be forgotten. I know very well that the Prosecution would be glad to wash its hands of them. But it cannot do so; and it comes into Court with stained, I had almost said with bloody hands Never shall I forget them; never should you, Gentlemen of the Jury. I do not believe that the annals of our English Law Courts, fruitful as they are in records of guilt, contain any memorial of a greater crime than the production of these Forgeries; and I aver that, as being men connected with those who committed the deed, Messrs. BOWKER and CULLINGTON and the rest are not the persons who should stand up here, and with a grand affectation of innocence, asseverate, "Thank God we are not sinners as this man is!" With full submission to my Lord Chief Justice, I maintain that I am entitled to argue from these antecedents of theirs, that they would not shrink from getting hold of our Witnesses if they could. It is a fair argument based entirely on their own conduct, which has been such as to justify me in saying that they would stick at no measure for the attainment of their ends. And yet they have the arrogance to complain that I and my learned friends have taken them by surprise. Characters such as these were known in the days of old Rome. JUVENAL, in speaking of one of them, says—

"Dat veniam corvis, vexat censurâ columba."

"Pardon he gives to the crows; but he loads the doves with his censures." This is exactly the position in which the Prosecution now finds itself; yet, instead of blaming its own malpractices, it professes to find fault with what it untruly calls ours.

Much comment here and outside has been made upon my dealing with Lord BELLEW. It has been treated by the advocates for the Prosecution, and the habitual practisers of adultery, as almost a public crime, that I should have spoken of him as a man devoid of all credit in, and even out of, a Court of Justice. What has his crime been against Mr. HARVEY but that of a nature which demonstrates falsehood of the worst kind in his very essence? Can any deed be more odious, or more demonstrative of essential falsehood and baseness, in the agent, than that of adultery with the wife of your friend? What a constant practise of hypocrisy and lying it proves! What a round of deception and villainy, to be the inmate of the house, the recipient of hospitality; and to be all the while undermining the chastity of the wife, and the honour and happiness of the husband; the name and fame of his children likewise! This is what BELLEW did; and it is because I have shown that he did this, that I have been made the object of the most slanderous attacks by those who sympathise with guilt like his. Who, in his senses, can believe this man upon his oath? Is not his life a lie? And if it is, can his tongue be true? Adultery is of all other crimes the one that is most founded upon cowardly falsehood. Here I may cite, as marvellously illustrative, the words of Judge MILLS, delivered in an American Court, in the case of *Hume* v. *Scott*, 3, A. K. MARSHMAN, 261. "Every person," says that learned Judge, "conversant with human nature, must be sensible of the kindred nature of the vices to which it is addicted. So true is this, that to ascertain the existence of one vice of a particular character, is frequently to prove the existence of more at the same time in the same individual. Add to this that persons of infamous character may and do frequently exist, who have formed no character as to their lack of truth; *and society may have never had the opportunity of ascertaining that they are false in their words or oaths.* At the same time, they may be so notoriously guilty of acting falsehood, in frauds, forgeries, and other crimes, as would leave no doubt of their being capable of speaking and swearing it, especially as they may frequently depose falsehood with greater security against detection than practise these other vices. In such cases, and with such characters, ought the Jury to be precluded from drawing inferences unfavourable to their truth as Witnesses, by excluding their general conduct. By the character of every individual, that is by the estimation in which he is held in the society or neighbourhood where he is conversant, his word and his oath is estimated. If that is free from imputation his testimony weighs well. If it is sullied, in the same proportion his word will be doubted. We conceive it perfectly safe, and most conducive to the purpose of justice, to trust the Jury with a full knowledge of the standing of a Witness into whose character an enquiry is made. It will not thence follow that from minor vices they will draw the conclusion in every instance that his oath must be discredited, but only be put on their guard to scrutinise his statements more strictly; while in cases of vile reputation in other respects, they would be warranted in disbelieving him, though he had never been called so often to the book as to fix upon him the reputation of a liar when on oath." Note the words, I beseech you, "the kindred nature of the vices." Bear in mind my language, that adultery, of all other crimes, is founded upon falsehood. It resembles poisoning; the deadly venom is administered as it were by the hand of friendship, and the assassin smiles upon his victim in the very moment that he hands him the poisoned cup. My lord remembers, for he prosecuted PALMER, the Rugeley poisoner; and he knows that when he murdered his friend COOKE, he professed for him all the genial hospitality of the host and well-wisher, and all the affectionate solicitude of a doctor for his patient—

* See the report of this, in Vol. 1, pp. 116, 117, 118, and consider the equivocal language of Mr. HAWKINS, which in no way supports the unblushing assertion of LUSH.

† Another falsehood; Dr. KENEALY had not assumed that as a fact—but as a thing that might have taken place.

while he was poisoning him all the while. And of such is BELLEW; of such are all adulterers.

Gentlemen, I must now refer to one of the juggles to which they resorted when the Defendant was under Cross examination. He was asked if he had played in any other theatricals than those at Burton Constable, and he replied in the negative. He was then again asked if he had not taken part in some private theatricals elsewhere, and he replied, after some thought, that he had an idea of something of the sort at Mr. BERKELEY'S in Gloucestershire. A copy of the play of the "*Castle of Andalusia*" was then put into his hand, and the Defendant said that he had read it. If he had not been ROGER TICHBORNE is he likely to have read it? He was asked a great many other questions with which, as regards this matter, I will not trouble you. From this, in the first place, I ask you to draw two deductions: firstly, his evidence shows that the Defendant knew that he had played in private theatricals at Mr. BERKELEY'S; and if that were not so, Mr BERKELEY ought to have been, and doubtless would have been, called to contradict it. Secondly, and this is not less important, it is clear that when the Solicitor-General put the questions, he put them as to Stonyhurst alone; and the answer given that it was at Mr. BERKELEY'S evidently came upon him by surprise.

Mr. TAYLOR (Juryman): He denies the theatricals at Stonyhurst!

Dr. KENEALY: The Solicitor-General then produced the play book. They now say that there was un expurgated edition—one that did not contain certain songs and allusions which it is thought do no credit to Stonyhurst. What has become of the real play-book which they produced in the Common Pleas? When I asked for it here I was told that it was not in the possession of Mr. DAVIS, the officer of the Court.* It is clear they had it at the first Trial; they now say, "We never had it;" but this they aver only after comments had been made upon those loose songs which it contained. I ask you is that fair? And when we see such artifices resorted to in a Prosecution carried on by the Treasury, are we not justified in assuming that there is a great great deal going on behind the scenes with which we are not acquainted when such things take place before the footlights.

The LORD CHIEF JUSTICE: Do I understand your allegation to be that Mr. HAWKINS and the Counsel for the Prosecution had the copy in Court and refused to produce it?

Dr. KENEALY: I never said anything of the kind. I am surprised that your lordship should put such an interpretation on my words.

The LORD CHIEF JUSTICE: I assure you that is what I understood.

Mr. TAYLOR (Juryman): We understood it so too.

Dr. KENEALY: I am amazed that the Jury so understood my words. What I say is, that in the Court of Common Pleas, the Solicitor-General put into the hands of the Witness a copy of "*The Castle of Andalusia*," as played at Stonyhurst; and that after reference was made here to the songs, it was kept back.

The LORD CHIEF JUSTICE: Then you transfer the charge from Mr. HAWKINS to the Attorneys. The honour of an Attorney is as serious a matter as that of Counsel. If they have done what you suggest that they did, their conduct is as much open to reprobation. I do not like these attacks made upon Attorneys.

Dr. KENEALY: My lord, I do not know who did it; nor have I

WILLIAM PALEY, ARCHDEACON.

accused anyone by name. I find the fact, and I comment upon it. I think your lordship ought not to fix upon me the charge that I am attacking either profession.

The LORD CHIEF JUSTICE: But you are attacking somebody!!!

Dr. KENEALY: I should as soon think of attacking Mr. HAWKINS for fabricating the Pittendreigh Forgeries, as for this. I do really complain, and I feel that I have a right to complain, of constant misconstruction and misinterpretation being put upon what I make as clear as I can. How can I tell—how can I be expected to name the persons actually responsible for this thing? I never charged Mr. HAWKINS with it: he has quite enough to answer for without.

Mr. TAYLOR (Juryman): *That was the meaning of your language!*

Dr. KENEALY: You may think so, sir.

The LORD CHIEF JUSTICE: We all thought so.

Dr. KENEALY: I am glad it has been cleared up.

The FOREMAN: You wished us to believe that one copy was purposely substituted for another.

Dr. KENEALY: No, I wished you to believe that they had the real acting copy in the Court of Common Pleas, and that when they heard me cross-examine one of the Witnesses upon its contents, they did not produce that copy.

The LORD CHIEF JUSTICE: What I understand to be asserted was, not that the document had been lost, but had been purposely withheld.

Mr. Justice LUSH: Otherwise it could not sustain your inference.

Dr. KENEALY: What I did say was, and what I think is, that it was purposely withheld, but I did not charge Mr. HAWKINS with purposely withholding it. I never intimated his name. What is clear, is, that they at one time had the true copy;† and when they are challenged to produce that copy here, they offer only some mutilated fragments. The perfect copy existed, and was in their possession in 1871. Is it not singular that it should have disappeared in 1873? If this were done at Nisi Prius, it would be called "sharp practice," but what are we to think of it when it is perpetrated in a Criminal Trial? But we have had little else than "sharp practice" here; and the worst of it is that it seems to be regarded as the right and proper thing. There is another little matter of this kind to which I call attention. You will remember how anxious I was to get hold of a ground plan of Stonyhurst dating earlier than 1840. On one occasion my Lord Chief Justice, noticing my wishes upon this subject, made a suggestion—for which I thank him—that if they had any plans they ought to be produced. Well, the Rev. CYPRIAN SPLAINE is called, and he was obliging enough to produce a ground plan dated 1858, but that was of no use to me. It did not contain any trace of these cottages which I was anxious to discover; and on Cross-examination Mr. SPLAINE said: "*It was put among those that were*

* It disappeared like the affidavit of Mrs. PITTENDREIGH to which the forged letters were appended. Three of these documents appear in *Trial* Vol. I., p. 120; the fourth in Vol. IV., p. 215. They are printed in the Volume furnished by the Treasury to the Defendant's Counsel which is entitled, "Letters, &c., written by the Claimant," and are numbered there 71, 72, 73, and 74. To each a note is attached as follows: "Common Pleas, TICHBORNE v. LUSHINGTON. This is the exhibit referred to in the *Affidavit of Sarah Pittendreigh*, sworn before me this 29th day of December, 1868. JNO. F. SWEETLAND, Commissioner, &c." This affidavit, though often enquired after by Dr. KENEALY, never could be traced or found. It was secreted, or smuggled away, so that Mrs. PITTENDREIGH never could be prosecutad for her crime.

† See *Trial*, Vol. I., pages 343, 378. It is clear that there was underhand work here.

prepared for me yesterday evening." (Vol. I. page 382.) I want to know who prepared them? Who is the manipulator of documents, plans, and papers in this Trial? He told me that he received them from the Rector—but unfortunately the Rector is not here.

The LORD CHIEF JUSTICE: I understood there were no cottages within the walls which would be shown by any plan.

Dr. KENEALY: We should have known that better if they had produced the plan I asked for.

The LORD CHIEF JUSTICE: *You asked for nothing more!* I am sorry for it, or I would have insisted on knowing whether there were any other plans than those that were brought.*

Mr. HAWKINS: The Witness was brought up specially, and he said that he had brought up everything that he had got.

Dr. KENEALY: No! no! Not everything that he had got, but everything that was "prepared for him." That is the material point. The Rector was the depositary of all the plans; but the Rector did not come. I complain that the custodian of these plans, which *must* exist, has not been called to explain their absence—the more especially as I so often asked for them.

The LORD CHIEF JUSTICE: You are representing the Rector of Stonyhurst as committing a fraud on this Court by keeping back a certain plan. It is a serious charge to make against an absent man, that he kept back a document which he ought to have sent.

Dr. KENEALY: It is not my fault that the Rector of the College was absent, my lord; I should have been glad to have seen him. He could have cleared up all uncertainty about this plan.

The LORD CHIEF JUSTICE: I do not think the world so black as you paint it. *Everybody is subjected by you to some fearful imputation.*

Dr. KENEALY: I am afraid that there are some portions of the world not very bright. From the beginning of this Case, I have been asking, petitioning, almost begging for some ground plan of Stonyhurst, prior to 1846. There was hardly a Witness of importance called from the College whom I did not interrogate upon this point, and I never could get it.

The LORD CHIEF JUSTICE: The Witness said he had applied to the Rector for a ground plan, and that he knew nothing about it.*

Dr. KENEALY: If that is your lordship's view of it, I must respectfully say that it is not mine. I repeat that the Rector, and the Rector alone, is proved to have been the person in whose final custody the plans are; and that he ought to have been here to tell us whether there was such a plan or not. By no other evidence could the existence or the non-existence of those much-disputed cottages have been set conclusively at rest. Plans of a date, years subsequent to ROGER TICHBORNE'S sojourn in the College are only waste paper.

[The Court then adjourned till half-past ten o'clock to-morrow morning.]

* As if the Chief Justice did not well surmise and know the particular plan that Dr. KENEALY so ardently wanted!

* This was a falsehood; the Witness said nothing of the sort. See his evidence, *Trial*, Vol. I., pp. 382, 383.

COMMENTS OF THE DAILY PAPERS ON JEAN LUIE.

The following appeared in the Summary of the 'Daily News,' reporting the proceedings of this day.

"According to arrangement, the first half-hour of yesterday's sitting, was devoted to hearing in the Judges' private room, the application of the Prosecution for leave to bring other and important Witnesses with reference to the evidence and the character and the antecedents of the Witness calling himself JEAN or JOHN LUIE. Before the application was heard, LUIE was brought down to the Court, by order of the Judges, addressed to Holloway Jail, and was seen for the purpose of identification by certain persons, in a room set apart for that purpose. Of the contents of the affidavits upon which the application was based, we are of course precluded from speaking. The result, however, was that permission was given to call the evidence as rebutting testimony, important to the issue now being tried; indeed if such evidence is to be brought forward at all, it would be obviously impossible to allow the Defendant's Counsel to remain in ignorance of it, while engaged in summing up the Case. Accordingly notice has been served, and on Monday next Witnesses will be called and examined by Mr. HAWKINS. Meanwhile the Governor of Holloway Prison, has again been directed to bring up LUIE, one hour before the commencement of the proceedings in Court on that day. These proceedings will probably last a considerable part of the morning; Witnesses being expected from Hull, Newcastle, Cardiff, Bristol and Liverpool; and the matter on which they are to be examined, extending over some years. LUNDGREN, the native of Finland, who has been recently referred to, as having been released on ticket of leave from Chatham Jail, on the 25th of March last, has been found to have a wife and children living in Bristol."

Comment on the unfairness of all this, during the Defendant's Trial, is not necessary.

In the 'Daily Telegraph,' the following was published at the same time.

"It is stated in the 'Newcastle Journal,' that the TICHBORNE Witness LUIE is supposed to have been during the first six months of 1866, in Newcastle Jail, on a charge of fraud similar to that of which he is accused of having attempted at Messrs. HOFFMAN, SCHENK and Co.'s. In October, 1865, a person represented himself to a quayside firm, as Captain GRUNDLAND of the vessel 'Marguerite,' which he said, was lying at Lowestoft. Next day a charter for the ship was secured; and was signed by GRUNDLAND; and £12 advanced to him. It was afterwards found there was no such ship at Lowestoft: and he was apprehended, and committed for Trial by the magistrates under the name of PETER PETERSEN, *alias* GRUNDLAND. At the sessions he protested his innocence, but was sentenced to imprisonment for six months."

All these paragraphs, of course, reached the Jury.

ONE HUNDRED AND THIRTY-FIFTH DAY.—FRIDAY, DECEMBER 5th, 1873.

Dr. KENEALY: Gentlemen of the Jury, I must continue my most ungracious but necessary task of pointing out to you what I am constrained to call the faults and blemishes of this odious Prosecution. And I shall do so, undeterred by the misrepresentations of myself and my conduct, which are being daily made in the public press, and with a fierceness and falsity of abuse quite unexampled. In pursuing this cause, which a sense of duty alone points out, I am exposed to a species of terrorism, public and private, which I am compelled nevertheless to face.* But I am willing to endure all things, sneers, sarcasms, attacks, libels, menaces of ruin, so long as I am conscious to myself that I am in the exercise of a duty that is imperative. Any Counsel who should be deterred by considerations of a selfish nature, from labouring to the utmost, consistent with honour, in defence of his client, would be unworthy to be a Counsel, and would be absolutely undeserving of the confidence of his client. He must pursue his path fearlessly, but fairly. He must not think of himself; he must be guided only by duty above all things. And I entreat that you, Gentlemen, will believe this of me, and that you will pay no heed, either to what may be whispered to you within or without these walls; or what you may perchance read in the pages of newspapers.

Gentlemen, I was addressing you yesterday on the withholding of documents; of the withholding of the ground plan of Stonyhurst College. If I should have to continue this complaint of keeping back evidence material for the elucidation of the truth, it is no part of my duty—no matter who challenges me—to fix the guilt of such conduct upon any one in particular. Sufficient it is for me to point out that evidence is kept back. It is absurd to ask me, as I have been asked, to name who does it; to point out specially the person whom I may have in my mind. It is not only absurd, but it is positively unfair. All that we properly have to consider is this: Is this Prosecution in possession of certain evidence, which it might have given us if it thought fit? And is it because I may not be able or willing to put my finger upon the particular individual who I suppose has that evidence in his control, that I am to be told, you must not make these assertions? It is unfortunate for the Prosecution that they should have so many blemishes in their case; that they do not produce all the evidence they might. It is most unlucky that if they produce books from Australia, these books should be mutilated, either by accident or by design. It is a great pity if they have that clear, positive, and perfect case which they pretend to have, that their books are neither clear, nor perfect; books that ought to be above all suspicion. I see nothing—more open to observation—nay, to grave suspicion, than the production of documents that are doubtful. You remember MACALISTER'S books. They are imperfect—they are mutilated in many material respects. What has been alleged by way of excuse for their condition, is unworthy of notice, or of belief. And when I point out to you matters of that kind, and things sworn to you by people who, coming from and going back to, distant parts of the globe, are subject to little risk in what they swear; and who are brought here at the public expense; am I wrong in calling your attention at the same time to the case of the Defendant, who, from want of funds, is in no position to contradict them by Witnesses from the same far removed regions? Suppose that any one of yourselves, or rather imagine some very poor man were charged with a grave offence

* Menaces of disbenchment, disbarment, and ruin which were now constantly conveyed to Dr. KENEALY.

and Witnesses are brought from the most distant parts of the world, to prove his guilt, what is he to do? Where can *he* get his hundreds, or his thousands, to bring Witnesses in reply? And is he to be treated as guilty because he is unable to contradict? Every feeling of justice revolts at such a proposition. He may be perfectly innocent. He might, if he were able, prove that innocence by Witnesses; but his poverty makes him powerless. He is like a man with no arms—fighting one who has both. He is like a man bound hand and foot, and then sent into conflict with a powerful giant. Therefore, before any of you is disposed to put blind faith in the MACALISTERS, or to ask "Why did he not contradict them?" you should first consider whether he had money to enable him do so. This is the answer I am compelled to give. We had no funds; we can do nothing through want of means. I suppose, I need not remind you, of the saying of HORNE TOOKE, when someone told him that "the law was open to every one." His rejoinder was, "So is London Tavern." So if I am rebuked for not calling Witnesses to repel this, and deny that, and refute something else, I can only liken myself to the poor wayfarer in the streets, to whom London Tavern and its luxuries are open—if only he has money enough to pay for them.

Gentlemen, there is another difficulty which we have in this Case; and one, of which the Prosecution has not failed to take advantage, to the great detriment of our Witnesses, and to the great injury to truth. They have verbatim notes printed of the evidence which was given by all our Witnesses at the last Trial; but we have no such resource in reply. On that occasion only fourteen or fifteen of their Witnesses were called, and the Jury were convinced—even without having had Lord BELLEW cross-examined on matters, gravely material. Thus, they knew almost practically, much that our Witnesses would prove, while we had no similar advantage. When we bring our Witnesses, most of them persons in humble life, carabineers, gardeners, labourers about Tichborne and Alresford and Upton, Mr. HAWKINS, opening one of his ponderous volumes reads to them during cross-examination, portions of the evidence which they formerly gave. In ordinary cases where that course is followed, the old evidence is read to them from the Counsel's brief, and the Jury do not know whether the Counsel is cross-examining them from mere instructions copied into that brief, or from what has been actually sworn in Court. But here, everybody knows how it is; for it is all read from a printed book. It is irregular, I think, that that should be done; but almost everything irregular appears in this Case.

The LORD CHIEF JUSTICE: That is an observation which you ought not to make.

Mr. Justice LUSH: It is *most* irregular.

Dr. KENEALY: Our Witnesses had not in the least refreshed their memory upon what they formerly said—they were not literate—and they had no means or time to do so. When, therefore, their words were suddenly recalled, after the lapse of many months, they were plunged into a kind of temporary terrorism, and did not know but that if they had made the least mistake then, or now, they might figure as defendants on a charge of perjury. I need hardly direct your attention to the unfairness of that course, which was adopted towards so many by the Counsel for the Prosecution—I do not like to add, by my lord himself. Look at Mr. BULPETT,* for example: a gentleman of position, and in demeanour reminding us all so much in all externals, of the late Lord PALMERSTON. Mr. BULPETT was severely cross-examined upon a variety of incidents mentioned in his evidence at the last Trial; and he was not allowed to refresh his memory by an appeal to the notes which he had with him. You saw his piteous condition; you saw, and I hope, you felt for him. Here was a man of position, an educated gentleman, a county magistrate, a banker with habits of precision; and yet he was puzzled in the extreme when he saw Mr. HAWKINS draw forth his big book. Whether he was frightened into saying anything inconsistent with his former testimony it will be for you to say. Now I put it to you, if a man in such a position as Mr. BULPETT, is so terrorized, what may not have been the results on persons in a humbler sphere of life? I do not say that such a course of procedure is legally wrong. I simply complain that it is unfair. Why, does this Prosecution, if anxious to confine itself within legal limits, yet do these unfair things? That is a question more easily asked than answered. We shall see if any reply is given to it.

The LORD CHIEF JUSTICE: Dr. KENEALY, I have already intimated that I see no unfairness in it. If it had been unfair, neither I, nor my brothers MELLOR and LUSH would have allowed it.

Mr. Justice LUSH: Assuredly not.

Dr. KENEALY: Gentlemen, Mr. HAWKINS has said to witnesses over and over again, "you were examined upon the former Trial. Did you then state one single syllable of what you have just said?" "No," was the reply. "I never was asked."† A very good and honest answer. It often happens that Counsel from forgetfulness, from inattention, from the hurry of the moment, omits to put questions to Witnesses, which are briefed, and which he ought to put. And is it not a hard thing, that because a Witness did not mention a matter at the last Trial, which he knew then, but was not questioned upon, that he should be now held up as unworthy of belief? You must have often seen yourselves in the course of this Trial, that when a Witness blurted out a fact, he was bidden not to run on, but to wait for Counsel, and until he was asked the question.

The LORD CHIEF JUSTICE: I am sure that no such thing happened here.

Mr. Justice LUSH: No such thing!

Dr. KENEALY: The Witness becomes afraid, if such a thing happens; and if the Counsel should overlook any fact of importance, it does not come out at all. The Jury too, are apt to form an ill opinion of such a Witness, as one who volunteers evidence, who may be suspected of over zeal; and is really a partizan. Hence most unfavourable impressions are often made, but undeservedly. I trust however that you will form no such opinions; nor distrust any of my Witnesses because they tell you now for the first time, things which they were not asked about three years ago. As a rule, Witnesses only answer such questions as they are asked; and seldom volunteer information. But our Witnesses are treated as perjurers; as if they had invented the things now sworn to, for the present occasion; or at the least, it is more than insinuated by the Counsel for the Prosecution, that their testimony is not to be relied upon.

There is another circumstance in this Prosecution. Nearly all the more intimate friends and members of the TICHBORNE family have memoranda for almost everything. There is hardly a date for which they have not their pocket-book; there is hardly a circumstance which is not noted down. If we question any time, or act, or place, they at once knock us down with a memorandum that has all the appearances of accuracy and truth. Probably you never before saw such a collection of curious and worthless memoranda.*

The LORD CHIEF JUSTICE: I suppose you mean books. Lady RADCLIFFE had books.

Dr. KENEALY: Yes, my lord; memorandum books.

The LORD CHIEF JUSTICE: Who else produced any? Who referred to any?†

Mr. Justice LUSH: Miss NANGLE did.

Mr. HAWKINS: And Mr. GERALD FITZGERALD.

Dr. KENEALY: And Colonel GREENWOOD.

The LORD CHIEF JUSTICE: He was not a member of the Family.

Mr. HAWKINS: The observation, my lord, was not confined to members of the Family.

The LORD CHIEF JUSTICE: *Oh, I thought it was!!!*

Dr. KENEALY: I said the more intimate friends.

Mr. HAWKINS: Lady RAWLINSON referred to memorandum books.

Mr. Justice LUSH: And that is within the range of Dr. KENEALY'S observation.

The LORD CHIEF JUSTICE: The SEYMOUR family had books; but they were not TICHBORNES.

Dr. KENEALY: Gentlemen, this is a most singular circumstance. It is unusual in ordinary life for such memoranda to be made. We know now that one at least of these memoranda was not made at the time. Whether it was so with others we know not. I do not say that they were manufactured for this Trial. I only point out what a remarkable thing it is. It is odd that an exhibition of the tattoo marks to an almost entire stranger should be corroborated by a memorandum.

The LORD CHIEF JUSTICE: To whom do you allude?

Dr. KENEALY: To Mr. FITZGERALD, my lord.

The LORD CHIEF JUSTICE: He had no memorandum as to the tattoo marks.

Dr. KENEALY: I did not say he had. But he fixed the time when he was shown the tattoo marks by a date in a memorandum book.

The LORD CHIEF JUSTICE: That is a very different thing. He had no memorandum of the tattoo. What he said was that it enabled him to fix the precise time.‡

Dr. KENEALY: He said, that it was a day or two after the circumstance mentioned in the memorandum, that he saw the tattoo marks.

The LORD CHIEF JUSTICE: I thought you said he was able to recall the memory of the tattoo by the memorandum.

Mr. TAYLOR (Juryman): There was one thing which struck me very much, as a remarkable confirmation of Lady RADCLIFFE'S dates. She said that ROGER saw them off to Scotland, from St. Katharine's Docks, on the 16th of August. A Witness, I think, named TAYLOR, mentions ROGER being at Rotherhithe on the 16th of August.‖

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* See his evidence, Vol. vi., pp. 265-288.

† The truth is that Serjeant BALLANTINE treated the case of TICHBORNE *v.* LUSHINGTON, carelessly from first to last: doing in that what he usually does; namely, going into Court without ever having done more than skim through his brief, but never really reading it, or mastering its contents.

* The Witnesses for the Prosecution seem to have the same faith in dates that Corporal TRIM had when telling his unfortunate story of the King of Bohemia. "There was a certain King of Bohemia," writes STERNE, "but in what year of our Lord——" "I would not give a halfpenny to know," said my uncle TOBY. "Only an' please your Honour, it makes a story look the better in the face." "Leave out the date entirely, TRIM," said my uncle, "a story passes very well without those niceties, unless one is pretty sure of 'em."

† This was asked with such an air of incredulity, as conveyed most palpably the idea that what Dr. KENEALY had just stated was false!

‡ See *Trial*, Vol. II., pp. 8-28.

‖ See *Trial*, Vol. II., pp. 285.

Dr. KENEALY: I have not said that these memoranda are false or forged. But I say that they are suspicious. I say that their preservation is lucky for the Witnesses, and lucky for their Case. It is a fortunate concatenation of circumstances that so many trivial things should have been preserved so long. *We* have no such memoranda. We have none of these convenient little books to fix our dates. None of our Witnesses have been able to refresh his memory in that way. If you remember the Defendant's Cross-examination, he did not refer to a single memorandum of this description. He is charged with being the contriver of a deep conspiracy; and it is perpetually insinuated that he is advised and helped by a number of artful followers. If that were so, I should have thought it one of the most natural things in the world, that amid a crowd of machinators, some of them might have hit upon the idea of a few forged dates to help on this fraud. But it has not been so. If this man is an impostor he is the clumsiest I ever heard of. He did not avail himself of a single scrap of paper to help him through, or out of, his difficulties. He is asked, for instance, when he joined the Carabineers? What could have been easier than for a designing man to have said, he could not remember; but asked to be allowed to refresh his memory by referring to some old almanac? He does no such thing. That carries with it, I say, a strong proof of innocence. It shewed all the heedlessness and recklessness of the real ROGER. I have mentioned to you their copy of the 'Castle of Andalusia.' I will not repeat the remarks. But I entreat you to bear them well in mind in connection with the present theme. But I must comment on their production of Sir EDWARD'S portrait; I mean that large photograph which is supposed to be his: but never proved. Perhaps I can best accomplish what I want by reading for you in full the account given in the shorthand-writers' report. It occurs at page 970.

"The SOLICITOR-GENERAL: Had Sir JAMES TICHBORNE large eyebrows?—They were a fair size I think.

"Just tell me if you know that photograph (*handing a photograph to the Witness*)?

"The LORD CHIEF JUSTICE: That is a new photograph?

"The SOLICITOR-GENERAL: Yes, my lord; I have seen that photograph before.

"Is it a photograph of Sir JAMES TICHBORNE?—Certainly not.

"Who is it the photograph of?—The photograph of ORTON'S father. Mr. SPOFFORTH has one.

"The LORD CHIEF JUSTICE: Portrait of whom?—I think I have also a right to remark that it is a photograph that they have been showing round the country saying it was my father. All the detectives have one. There is a dozen knocking about, and they have each got one showing about the country.

"Is it like ORTON'S father?—I do not know, I never saw him.

"You never saw him?—No, I never saw him.

"Who is that (*handing another photograph to the Witness*)? Is that anyone you ever saw?—If it is, I do not know it again.

"The LORD CHIEF JUSTICE: I must just mark those, if you please.

"The SOLICITOR-GENERAL: *We need not have these marked! ! !*

"The LORD CHIEF JUSTICE: I must mark it to know what has been shown. I will mark the first, 718.

"The SOLICITOR-GENERAL: That larger one is not like anyone you ever saw?—I will not speak to photographs at all.

"The FOREMAN: The Jury would like to see it.

"The SOLICITOR-GENERAL: Just let me finish this, Gentlemen. It is only for convenience. That, you say, is not like anyone you ever saw?—I do not know that it is. Do you recognise anybody from it?—No, I do not. I would not speak from it. You say you would not speak from photographs. As far as you know, that is not like anyone you ever saw?—I do not think you could recognise anyone from such a picture as that.

"The LORD CHIEF JUSTICE: Do you recognise anybody from it?—No I do not. You do not recognise the portrait of anyone you ever saw?

"The SOLICITOR-GENERAL: Is it at all like anyone you ever saw?—I do not see that it is.

"The SOLICITOR-GENERAL: Now the Jury can see them. (*They were handed to the Jury.*) Should you be very much surprised to find that the larger one was the photograph of Sir EDWARD DOUGHTY?—I should be very much surprised. I am quite certain if you showed it to a hundred people there would not be one who recognised him.

"Mr. Serjeant BALLANTINE: The Jury will not assume this is the likeness of anybody.

"The LORD CHIEF JUSTICE: Gentlemen, you will be kind enough not to assume anything except what the Witness has said. As to what the first was, he said that is a portrait of ORTON'S father, but he has never seen ORTON'S father. He says Mr. SPOFFORTH, his solicitor, has one, and it has been shown about by detectives.

"The WITNESS: I have seen several.

"The LORD CHIEF JUSTICE: There is no proof at present of who the other is."

Now, I ask you, could anything be more unfair than this? I do not like to use the phrase. Could anything be more wicked? His attention is first directed to the subject of Sir JAMES TICHBORNE; and while his mind is full of that subject a coloured photographic miniature, with "large eyebrows," being a likeness of old ORTON, is suddenly put into his hands. And he is coolly asked if that is a likeness of Sir JAMES? He gives the proper answer; and when the Chief Justice proposes to have it marked, the Attorney-General demurs. Why did he object to its being marked? Was it for any good purpose? His lordship insisted that it should be marked, and so we have it here. He is shown next what purports to be a photograph of Sir EDWARD. He does not recognise it; and he is then asked whether he would be very much surprised to hear, &c., &c. You have heard his reply. Now, gentlemen, we have this photograph professing to be that of Sir EDWARD, produced, and not recognised; and the Prosecution asks, "How can this be ROGER TICHBORNE, if he does not recognise the likeness of his own uncle?" That question must no doubt have had an important effect upon the minds of the Jury who were trying that Case; and quite as important an effect on the minds of the outside public, who talk to jurymen—their own personal friends with whom they daily ride, or gossip, or dine—and who, without any evil object in their thoughts, might well say, "That was a singular incident which came before you, the other day, when the man was unable to recognise the portrait of his uncle." Does it not seem to you to be a most curious fact, that not one member of the family was ever shown that photograph in Court? Miss NANGLE was called—the person who of all others must best know—but they did not dare to put that photo into her hands. Why? I should like to know the reason why? Be sure there was some reason, and a potent one. Suppose they had said, "I don't recognise it," away goes the insinuation against my Client. And I could have retorted upon Miss NANGLE, or Mrs. GREENWOOD, and the rest, "You cannot be the person you profess you are, since you don't know your old relative or friend Sir EDWARD DOUGHTY."

Mr. TAYLOR (Juryman): *I think that photograph was proved.*

Dr. KENEALY: No, it was not. The only person to whom it was shown, was BOGLE; and I have something to say upon his evidence in reference to it.

Mr. HAWKINS: *The only question asked was, where it was taken?*

Mr. Justice LUSH: Is BOGLE the only person who saw it?

Dr. KENEALY: I think so.

Mr. TAYLOR (Juryman): Was there not another copy of it proved?

Dr. KENEALY: There was no copy proved, Mr. TAYLOR. Immediately it was offered to be put in, it was challenged by me.

The LORD CHIEF JUSTICE: I think it was put in as a portrait of Sir EDWARD DOUGHTY.

Dr. KENEALY: No doubt, but I challenged it at once; and your lordship said it was not to be taken as proved that it was he.

The LORD CHIEF JUSTICE: If I had known that there was any doubt about it, I certainly would have asked some of the Witnesses who were acquainted with Sir EDWARD some questions with respect to it. *I think it was said that the photograph was taken from a portrait of* Sir EDWARD *when he was a very young man; younger than when* ROGER TICHBORNE *knew him. I now remember that was so.* So that the Defendant might well not have recognised the portrait of his uncle taken at the period when he had never seen him.

Mr. Justice LUSH: I think I remember your making that observation at the time.

Dr. KENEALY: What do you think of their putting that photograph into the hands of the Witness, and asking the Jury to believe him to be an impostor, because he did not recognize it; although it is admittedly the copy of a portrait taken when Sir EDWARD was a very young man?

The LORD CHIEF JUSTICE: That is a fair observation, *but it is not altogether conclusive*; because most of us might not recollect portraits of our own families, *and still might trace a likeness in them to those we knew later in life.*

Dr. KENEALY: You must remember that Sir EDWARD was paralysed.

The LORD CHIEF JUSTICE: Only in the leg; never in the head. *There was no mental paralysis.**

Dr. KENEALY: I think it was said that he never wrote a letter. What does that indicate?

The LORD CHIEF JUSTICE: I think that was ascribed to paralysis of the hand.

Dr. KENEALY: I do not know that it was ascribed to anything in particular: but I regard it as a suspicious circumstance. And I fancy that the tendency of all paralysis is to alter, if not distort, the expression of the features. Be that as it may, it is produced as being one of those ingredients in the Case that go to prove he is not ROGER TICHBORNE. Mr. HAWKINS is here prosecuting for the Crown, which stands indifferent, or ought to do so, in all Prosecutions; and he does not think it his duty to say to you, Gentlemen, "You ought not to draw any conclusion unfavourable to the Defendant by reason of his ignorance of this photograph, because it is one from a painted portrait of Sir EDWARD when he was a very young man; whereas the Defendant did not see him until he was long past fifty." Mr. HAWKINS lets *me* find that out if I can; and if I do *not* find it out, he gets all the benefit from such a fraud. Is this right? Surely there can be only one answer. But I go farther. I say that its production in the Civil Trial was an unworthy and wicked device: but its production here is positively scandalous. Things are done in civil actions which are never thought of in criminal proceedings:

* How did the Chief Justice know this? Why did he say it?

and this was a wrongful thing. But more, it was evidently a photograph from a portrait, which there was nothing to shew that ROGER TICHBORNE had ever seen. If he had, why did they not prove it? BOGLE, who knew Sir EDWARD from the time when he was eleven years old, said: "If I had seen that photograph, I would not have known it was Sir EDWARD," and it is left to us, amid the mass of matter, to discover that important fact ourselves if we can. See the staff which the Crown has: see how few we are. Yet not even in such a thing as that will they give us any help. To my mind, this is evidence of great unfairness on the part of the Prosecution: and I hope that every one of you in that box will agree with me. It was calculated, if not designed, to carry with it and convey to you an impression that was false: and it was probably one of the very incidents in the Common Pleas which made the Jury there come to that abrupt and hasty conclusion which I should be sorry to think that any of them now looks back upon with pride.

I pass by, for the present, what I may call "the smudged daguerreotype." I shall have to address to you upon that more than a cursory remark: more especially in connection with this Defendant's ear. I believe that I shall smash that ear-evidence. I hear a murmur. But I think that I shall convince you that *that* is about as bad a feature in this Prosecution as others to which I have adverted. I am grieved—I am perfectly astonished—at the power which ignorance and prejudice have to blind the understanding, if I can judge by those murmurs which I hear; and upon this special feature of "the ear" I am as confident of success as that I am now standing before you at this Bar.

Here, also, I make only a passing reference to that juggle—for so I must call it—of the Prosecution getting the names, and, in some respects, the evidence of our Witnesses, and then declaring they would not pay their expenses. To me it seems so mean, and shabby, and contemptible, as contrasted with that which ought to be the conduct of the Treasury, that I am utterly ashamed of it. But it is clear that the Prosecution is in nowise abashed; though, like its own daguerreotype, is is smudged all over and blemished in its conduct of this Trial. And now what further do we find? They are striving to prevent any record of these disgraceful proceedings going down to future times. They have ceased to print the shorthand-writers' notes. They have them, indeed, in manuscript for their own guidance, but they refuse us a copy; and they hope that by this means my comments on their deeds may perish; that this Trial may never be published to the world; and that some future Historian who may not be honest, may find these present writings on some dusty shelf; and by garbling them as he likes, with few or none to contradict him, may give what complexion to the Trial he pleases, and clothe its actors in imaginary beauty. May I not add also that it looks as if they thought (as I warned them in my Opening Speech) that future ages would contemplate this Trial with disgust if they could see it as it was; it looks as if they dreaded those discussions which may arise in days to come. They do not choose that the history of what passes here shall appear in one complete and concentrated printed form for the inspection of future times; an indictment of themselves, as it may be called, in which all their "smudges"—to use a mild expression—may be handed down to indignant posterity. I do not wonder that they are apprehensive of infamy, when they consider the rottenness of this entire Prosecution. They are wise also in their generation to stop any further report of my comments, lest haply some independent Member of Parliament—if one there be—may read some of them when the House re-assembles, and ask in that assembly can these things be true? Sagaciously, therefore, for themselves have they ceased to print the shorthand-writers' notes of what I say; yet I doubt much whether my words can be stifled, though they are garbled and misrepresented much.

"Exoriare aliquis nostris ex ossibus ultor."

"Arise thou, in future times, some Avenger from those ashes, who shall repay and requite us all, for what we now do, good or evil." Such is my prayer. And, oh, may it be fulfilled.

Gentlemen, I must now call your attention to Miss HALES. This matter seems to me to be as dark as any in the whole of this Case. The Defendant, in that loose and astonishing style of folly and bombast which he appears to have picked up among the Spaniards in South America (for it was among them that some of his extraordinary exploits began), seems hardly to know the use of the English language, when he said on Cross-examination,—"I visited Miss HALES at Canterbury, and was paying my addresses to her;" when, as far as I can see, the whole affair was little better than an idle and absurd freak that ought not to have been recalled by any sensible man.

The DEFENDANT *(very sharply to* Dr. KENEALY): It was perfectly true.

Dr. KENEALY: It may have been true, but it was absurd to revive such nonsense.

The LORD CHIEF JUSTICE: Was it so absurd? It was given as a reason for discontinuing his attentions to Miss DOUGHTY. He fixed the date, and gave a reason.

Dr. KENEALY: But to treat it as the Prosecution has done is catching at a straw in the extremity of drowning. It is fishing for a minnow with a harpoon. True or untrue it was absurd to bring forward that folly before this Court in a solemn Trial at Bar: but the Crown in its wisdom has done so. It shows how resolved they were to omit no device by which they could possibly catch this fly within their cobwebs. You remember the appearance which this lady presented in the box. She is what is called a White Nun; that is, a Nun who is not completely secluded from the external world. I do not recollect any exhibition in the whole of my life that ever struck me with greater pain or sympathy than the appearance of that poor lady in the box.* She stood forward alone, and uncorroborated, to support an allegation of perjury against this unfortunate man. Whether she was under any strange influence, such as the influence of opium, I know not. You will form your own opinion; you watched her, and can judge. I own that she had my deepest sympathy. Mind, I do not for one single moment say that Miss HALES came forward to say what she knew to be untrue. I am constrained to say this, because of the persistently false manner in which nearly all that I say is misinterpreted or misrepresented by the Press and others. All that I contend for is that Miss HALES swore to what I have *proved* to be untrue. Under what particular auspices that unhappy lady was brought into the box I cannot say, although I may conjecture. Some strong pressure—some powerful influence, some mighty force of persuasion—must have been brought to bear upon that unhappy lady before she came here to pledge her oath to what everybody who has heard my Witnesses must now believe to be untrue. How wonderful—but how hideous—what a perfectly unparalleled thing it is for a lady in that rank of life—one who can have no selfish interest in this Case, or in crushing this unfortunate Defendant—what an appalling thing it is to think that influences could have been brought upon her which led her into that box to tell us what is wrong. Let me recall your attention to her evidence †. She said she did not remember ROGER TICHBORNE at all: and as I read these words, her voice and figure are before me, and still excite in me the deepest commiseration. She never saw him! "Did you ever speak to him in your life?—Never to my recollection. Or your mother?—I do not think she ever did. To your knowledge?—No, I do not think she ever did. In your presence?—No, I never saw him." You see at first she says, "I do not remember," and then she arrives at a positive "I never saw him." Then she does not remember the Carabineers, or any of the different regiments quartered at Canterbury; but she adds, "all the soldiers that were at Canterbury attended our Chapel." She, of course, meant all the Roman Catholic soldiers; but if the Defendant had happened to have made this slip, he would, by the sort of Lynch Law meted out to him by the Prosecution, have been described as a liar and impostor. Miss HALES does not know the difference between horse and foot soldiers. She does not remember the year. Her memory is a blank as to any particular year. I then asked her in cross-examination if she ever spoke to any of the officers, who came with the soldiers to Chapel? and she answered, "yes, to some;" and on being asked in what year, she answered, in the same helpless, listless way, "I think it was after 1853. I am not quite sure." After 1853, Gentlemen! That is remarkable. It was when TICHBORNE had gone away. Yet she declines to say so certainly. She answers as a poor child would, who had been tutored. "Say it was after 1853; and all will be well." But then there is this salvo, "I am not quite sure." She adds that she gave her evidence to somebody whom she does not know; but that he was sent from the Treasury. Did you ever, Gentlemen, witness anything like the manner and the forgetfulness of this poor lady, on simple matters? Yet she is put before you as a reliable Witness, on whose uncorroborated statement you should convict the Defendant of wilful perjury, because he says that he talked to her in 1852, and that the soldiers waited outside while he was so engaged.

The LORD CHIEF JUSTICE: As he says, "for an hour or two." ‡

Dr. KENEALY: Oh, my lord, I don't care about such a phrase as "an hour or two" in this Case. The wonder is he did not say "a year or two." He would have said so, if it had crossed his mind. It would be most unjust to judge this man merely by his words.

The LORD CHIEF JUSTICE: How are you then to treat any man in such a case, if he is not to be judged by his words?

Dr. KENEALY: You are not dealing here with an ordinary man. I have already told the Jury how I think they ought to judge him; and I speak in reference to my theory.

Mr. HAWKINS: You will find, my lord, that Miss HALES wrote to her own solicitor.

The LORD CHIEF JUSTICE: But do you not see the alternative—namely, that you are fixing Miss HALES with perjury?

Dr. KENEALY: I have distinctly disclaimed making any such imputation.

The LORD CHIEF JUSTICE: I can quite understand that. But while you disclaim it, you are really doing the thing; and doing it, too, in a most objectionable form.

Dr. KENEALY: I say I disclaim the idea of making any such imputation; and having said so, I think it rather hard that I should be told that I am doing it.

The LORD CHIEF JUSTICE: Yes, and you are doing it in a most

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* She appeared as if under the influence of a narcotic; as if she had been drugged.

† See *Trial*, Vol. III., pp. 11, 12.

‡ See Cross-examination of Claimant, page 1821.

objectionable manner; for while professing to repudiate the intention of making a charge, you go on insinuating that this lady made statements which she knew to be untrue, and made them under influence.

Dr. KENEALY: I have never said, or insinuated, that she knew them to be untrue. It seems that no matter how I disclaim a meaning, my disclaimer is not credited.

The LORD CHIEF JUSTICE: Very well.

Dr. KENEALY: A person may be persuaded by the assurances or influences of those in whom he has confidence, and so make statements that are not true; that is all I said.

The LORD CHIEF JUSTICE: Really, Dr. KENEALY, that was not the way in which you put it. You may have meant it; but I can only gather your meaning from your words.

Dr. KENEALY: God help me, I say. It is quite enough for me to have to struggle through the dark and intricate wildernesses of this Case, without having to contend with these constant misinterpretations, and without having your lordship perpetually on the watch, as my censor. Day by day, the newspapers also put false and wicked interpretations on my words. I am spoken of as a man who makes reckless and untrue assertions; and what can be the object of those who do so, but to persuade the Jury that I am a rash and reckless man, to whom they should not listen; and thus to weaken the effect of what I say?

The LORD CHIEF JUSTICE: *Do you suggest that as the motive of my interference?**

Dr. KENEALY: *I did not do so.*

The LORD CHIEF JUSTICE: Then why introduce the topic?

Dr. KENEALY: Because that line has been taken against me by the Press, and others.

The LORD CHIEF JUSTICE: But I did not mean to suggest that.

Dr. KENEALY: I did not suppose that your lordship had any improper motives. But paragraphs, imputing the most odious things to me, are constantly appearing.

The LORD CHIEF JUSTICE: If so, it is most reprehensible—but the newspapers are not before us. This, however, I say, that it is the duty of a Judge, if he thinks a Counsel is misrepresenting the evidence, or the facts, not intentionally—for I will not assume that it is done intentionally—more especially when it has reference to imputations cast upon the character of parties or Witnesses; I say it is the duty of the Judge, not to sit still and hear, and allow a false impression even temporarily to be made; it is his duty at once to correct the misstatement; and if the occasion for such correction happens more frequently than we could wish, it cannot be helped. The duty of the Judge is the same: *and must be, and shall be discharged!*† (*Sensation in Court*).

Dr. KENEALY: All I can say is that interpretations are put upon your lordship's corrections—if I may call them so—which I am quite sure you would be the first to disclaim; and these by persons who are interested in representing the advocate as a rash and reckless speaker.

The LORD CHIEF JUSTICE: If so, that is very improper. I regret it; and should certainly reprobate it.

Dr. KENEALY: I suppose your lordship never intended to convey such an impression, and I made no imputation upon you. I do not for a moment insinuate or suggest corruption of any sort in your lordship; but so confident do the Prosecution——

The LORD CHIEF JUSTICE: Dr. KENEALY, address yourself to the Jury.

Dr. KENEALY: Certainly, my lord. Gentlemen, so confident for some reason do the Prosecution seem of success in this Case that they do not condescend to offer even the least corroboration of Miss HALES's evidence. They might have called the priest, or the acolytes, or the servants.

The LORD CHIEF JUSTICE: Has any Witness stated that ROGER TICHBORNE was ever inside the house where the servants could have seen him?

Dr. KENEALY: But this young officer was seen walking about openly in the grounds with Miss HALES. That was a thing which the servants must have witnessed.

The LORD CHIEF JUSTICE: Has anybody stated that? There is all the difference in the world between an officer speaking to the lady to whom the chapel belonged, and walking about with her.

Dr. KENEALY: I think it has been stated and proved beyond doubt or question; and it can be accepted without saying that Miss HALES has committed wilful perjury. Gentlemen, I suppose I need not again disclaim any evil intention as regards that lady. There is her evidence, and it is for you to judge of it. Upon this matter I meant to be, and I hope I was, extremely delicate. I am not angry with this lady. I only pity her from the depth of my heart. Here was a woman of position brought forward to negative a statement made by the Defendant; and to negative that statement upon her oath. I hardly liked from the way in which I was instructed—the haphazard way—to commit myself to anything when I was opening my Case to you. I did not venture to say, positively, upon many things that I could either prove or disprove them; or even to go the length of promising you that I would make all right. I knew what eyes were upon me. I knew how I was watched, and that I should be sternly reminded of any pledge that I should make, and not fulfil. I now forget whether I alluded to Miss HALES or not; but I hope if I did so, that it was in the tenderest manner. In opening my Case to you, I scarcely knew where I was, from day to day. I did not know at what moment the Case would collapse and suddenly come to an end. And this is well known to all here; for I made no secret of the fearful difficulties by which I was hemmed in. But I am asked what evidence contradicts that of Miss HALES. Need I go beyond that of Sergeant MUNDY?—now an Assistant-Warder at Chatham Convict Prison. This Witness, I remind you in passing, though he fills a responsible position, was insulted in the usual style by the leading Counsel for the Prosecution when under cross-examination. "What was your rank when you left the army?—I was a private. You were once a sergeant?—Yes. But you were reduced to the ranks?—Yes." The Witness was not asked why he was reduced to the ranks; and the impression was sought to be conveyed to you that he must be a very bad man. I believe there is upon the Jury a gentleman* who has some experience of military matters, and he will tell you that a single act of insobriety will be enough to reduce a sergeant to the ranks. But to adhere to the point. This Witness was asked whether it had been his duty to attend at the Canterbury Chapel with the Roman Catholic soldiers, and replied yes. In answer to my lord, he stated that he was not a Roman Catholic himself; and in reply to further questions he said that the chapel was in Miss HALES'S mansion; and that the Officer in command of the men when they went there was Lieutenant TICHBORNE. He also said that he had known that officer fall out of the ranks to speak to Miss HALES; and that he had seen him conversing with her in front of her house. This is clear and positive evidence that Miss HALES did know ROGER TICHBORNE, and that she spoke to him when he was quartered at Canterbury; and this Witness was not even touched on cross-examination. I do not mean that he was not examined on the point—as one of you seems to think—but that he was in no wise shaken. Therefore it is, I submit, as clear as possible that Miss HALES told us that which was not quite correct.† The next Witness who speaks to this matter is JAMES BEHAN, who was examined on the same day as MUNDY. He was a non-commissioned officer in the 8th Hussars, and was formerly in the same regiment as TICHBORNE. This Witness deposed to the men waiting some seven or eight minutes after prayers were over, on parade, for the officer to march them off; but he could not say where the officer (who was TICHBORNE) was while they continued waiting for him. Where could he be, but in the house with Miss HALES? In answer to further questions he added that on these occasions when he had gone to Miss HALES'S he had seen a lady looking through the blinds; but it does not clearly come out whether that was Miss HALES or her mother. The next Witness was LAURENCE RICHMOND,‡ of Preston, formerly of the Carabineers. He says that he used to go with the other soldiers at Canterbury to hear mass, under the command of Lieutenant TICHBORNE. He remembered that the men, after leaving chapel, waited for the officer, but he could not say where that gentleman was. But whenever they saw him returning to his men, it used to be from the direction of Miss HALES'S house. This had occurred more than once; and the delay, he said, was usually three or four minutes, although he remembered waiting on one occasion for ten or fifteen minutes. WILLIAM BILBY stated that he knew Madam and Miss HALES; that he had seen the soldiers waiting outside the house for Mr. TICHBORNE; and that on more than one occasion he had seen Miss HALES shake hands with that officer. These Witnesses, it is clear, were not coached or drilled to swear up to the Defendant's time, for he, as is alleged, stated that he kept them waiting an hour or more.‖ Now, if there had been all this wickedness in the Defence which is constantly suggested, I suppose it would not have been impossible to arrange these matters, and to have got persons who would "swear up to the mark." And the fact that none of them have done so, and that these discrepancies exist, I put before you as powerful evidence of *bona fides*. And I ask you to bear this in mind, when you are asked by the other side to treat those Witnesses as persons who ought not to be credited, and to believe that they swear exactly, not only as they think, but as they know and remember. The next Witness is JAMES MARTIN;§ and he says that he has seen ROGER TICHBORNE marching the men to Miss HALES'S house; that he has seen him talking to Miss HALES in front of the hall door; that he has seen him bowing to her, and shaking hands with her. The Witness continued, "I thought he knowed her pretty well by that." He had known the troop, he said, to wait outside the house for ten or fifteen minutes. Well, Gentlemen, if this

* This question was put with the covert treachery of the tiger ready to spring on his victim. Had Dr. KENEALY in his answer given a chance, it is known that the Judges were then and there resolved to fine and imprison him.

† The reader may judge whether this speech was at all relevant to the observations made concerning Miss HALES.

* This was Mr. DICKINS, the Foreman, who professed and prided himself upon vast military knowledge—though we never could find out why, except that he sold hosiery to some military men; or probably cooked for them at his restaurant.

† See the evidence of MUNDY and BEHAN, *Trial*, Vol. V., pp. 183 and 195.

‡ See Vol. V., pp. 290-293.

‖ Mr. ONSLOW, who was present during the whole of the Claimant's Cross-examination, declares that the words he really used were "a quarter-of-an-hour or more."

§ Vol. V., p. 381.

evidence has any weight—and I fail to see why it has not—can anything be more conclusively made out than that Miss HALES is wrong in the evidence that she gave, and that the Defendant is right? Her evidence, I submit, has completely broken down. The "attention" which the Defendant says he paid to this young lady is susceptible of different meanings. Officers in the Carabineers, doubtless, pay attention to all the young ladies that they come near; sometimes to while away their idle moments, sometimes from better motives; but if you asked a dozen of them what they meant by "attention," you would find it to be a flexible word. What the Defendant means or meant, I do not know. He probably meant nothing; but, as I said before, if you judge of him strictly by all that he says or does, why then his Case is ended. I say that it is as clear as anything can be, after so many years have passed, that the Defendant spoke the truth when he said that he knew Miss HALES; that he was in the habit of going to her chapel with his men; and that he kept them waiting outside while he and she conversed. Whether he talked with her inside the chapel, or inside the house, or in the avenue, I leave you to judge. But this I must ask you, what reason could have induced the Defendant to invent a circumstance like this, if——

The LORD CHIEF JUSTICE: *He mentioned it to fix a date.* He was asked under what circumstances he discontinued his intercourse with Miss DOUGHTY, and he said he could fix it by a circumstance. He was questioned what that circumstance was, and he replied that he would rather not tell. Being pressed, he said it was when he was paying attentions to Miss HALES; and it was after that he said he kept the men waiting an hour or two.

Dr. KENEALY: I think I may ask whether it does not show great rashness, amounting almost to criminal recklessness, on the part of the Prosecution, thus to have thrust forward Miss HALES as a Witness, without having made a single enquiry as to whether she could be confirmed in her testimony—as to whether she was not speaking under some strange delusion. You now know all. That the Defendant was aware of a fact of this kind, which could have been known only to a very few soldiers, with whom he had not come in contact, is strong proof that he knew what only ROGER perhaps knew. It appears to have come out, as it were involuntarily, accidentally, on the spur of the moment, unconscious proof of the identity of the Defendant with the long lost man. Were those who put Miss HALES into the box, so satisfied with themselves, from the cloud of prejudice and calumny which they have got up against the Defendant, that they had no doubt they could convince you that she was speaking truth, and he was telling lies? It looks like it. So confident are they that all they have to do here is to come, and look around, and conquer, that they disdain to offer any evidence in support of this assignment of perjury. Where is the priest who used to say mass? Where are the sacristans who were in the habit of serving? Dead? The presumption is against that. Where are Miss HALES's servants? Dead? Surely not all dead?

The LORD CHIEF JUSTICE: Is there any evidence of TICHBORNE'S ever having been in the house?

Dr. KENEALY: I have commented on nearly all the evidence there is. It is scarcely probable that Miss HALES would always meet a young officer of cavalry in the avenue, or elsewhere, without having been seen by one of the servants—of whom, at such a mansion, I should think there would have been twenty or thirty. She was seen, or she was not. If she was seen I can understand why the servants are kept back. If she was not seen I cannot devise why they were not called. There must have been some Roman Catholic families in the place: they might have been able to give evidence. They may have noticed these two young persons in the chapel, and could have told us whether they saw them together in the grounds. Why are they not called? Ought not the Crown to have thrown full light on this affair? Are we to swear by Miss HALES alone? I do not think the English stomach is quite prepared for that, though it certainly has had to gulp down some strong bits in this Case. I think it rashness—to use a gentle phrase—on the part of the Prosecution to bring this lady here, with no one to support her—rashness or very great presumption, and confidence in victory. This is not right, just, or proper. In this great Trial the Crown is open to reprimand for coming before the country with such lame and unsatisfactory proof as this.

Gentlemen, I will now call your attention to another of the scandalous portions of this Prosecution: one to which I have already made slight allusion, but to which I must direct your grave attention, because it proves how utterly heedless these Prosecutors are in either what they say or do, so long as they think that they can gain their ends. I do not like to say that they stick at nothing, but their proceedings as to their alleged "craziness" of the dead Lady TICHBORNE are as bad as bad can be. One of the notions which has been diligently sought to be driven into your minds is, that you must pay no heed to what Lady TICHBORNE said or did, or to a Mother's recognition, because she was "a poor crazy old woman." She was held up to you by Mr. HAWKINS in that light. He rang the changes upon it until we were all tired and sickened with the satiety. She was nothing with him but "the poor crazy old Dowager," "poor crazy old Lady TICHBORNE," and "poor crazy old soul." These were the phrases, repeated *ad nauseam;* until some of you began to think, "What a sad thing that this poor crazy creature should have been made the dupe, and swindled by this impostor!" How highly must your sympathies have been awakened, when you thus contemplated her condition, and saw in her the helpless creature portrayed by Mr. HAWKINS. Why, Gentlemen, never was there a falser picture. She was absolutely the reverse of that which she had been painted. But the Prosecution was in a critical state. It was under a dire necessity to destroy, if it could, that great transcendent proof of the Defendant's identity which his mother's recognition established, and the almost divine fidelity with which she continued to adhere to her belief in him to the last. They felt that their Case was gone unless they could show that it was not maternal instinct, or knowledge of the past, or recollections of his features or lineaments that spoke, but only a crazed and shaken intellect. The crafty contrivers of this Prosecution seem to have thought that if they only persuaded the Jury that her evidence was not to be relied upon, then their victory was certain. That in all probability was the reasoning of some of the notable persons, who have contrived the machinery of this great inquisition. First of all I remind you of her letters, of which they print just as many as they choose. They have got hold of all the documents, which were once in possession of the mother, Lady TICHBORNE. I do not know, gentlemen, whether you have now before you the volume containing those letters from Lady TICHBORNE to GIBBES and CUBITT; if you have I will not refer to them again, any further than by recalling your recollection to the fact, that the style of composition, and the language used in those letters, are those of a thoroughly careful, cautious, and prudent woman. The only charge that can be brought against them, is that of inaccuracy in dates; and I am afraid that the Defendant inherits the same characteristic. But with that exception wiser letters—letters more to the practical point—have seldom been written. Had there been the least trace of "craziness" in her, it is impossible that it would not crop up in some passing paragraph or phrase. In the well-known novel of "DAVID COPPERFIELD," you all remember poor Mr. DICK, who had a "craze" such as is now in Mr. HAWKINS's head, and he could not sit down to write without bringing in the subject of King CHARLES the First. And I suppose this is peculiar to persons who are slightly touched. But never do we find anything that is not sound and sensible in Lady TICHBORNE's letters. Do you doubt that they have ransacked and secured every scrap she ever wrote, in order to find some glimpse of what they want? But they have not even a fragment to put before you. They tell you, indeed, that she sometimes sat in her dressing-gown till two o'clock, and that she burned a hole in her night dress! Heaven help them in their dire extremity, if this is all that they can bring forth. Notwithstanding their opening flourishes, they did not dare to question a single member of the family on the subject. There is the French priest, it is true. I will not waste a word upon such a person. There is hardly a Frenchman who would not laugh at me, if I troubled myself about the testimony of such a character, and I hope you, Englishmen, are as wise as the French. We have had her brothers here: we have had her lawyer: we have had persons in close relationship or intimacy with her—did they question one of them upon this point? Not one. Even Mr. ALFRED SEYMOUR, who holds the memory of his sister in such antipathy, as was evidenced by the diabolical conversation which he held in the lobby of the House of Commons, with Mr. ONSLOW and Mr. BAILLIE COCHRANE, and which he could not deny—even *he* could not safely be interrogated upon this. All that they rely upon, therefore, is by a glib speech to endeavour to catch you, gentlemen; being all the while indifferent themselves, whether they do so, by fact or fiction. So much with regard to this, upon which I was prepared, if necessary, to offer evidence *ad infinitum* to refute it; until the Lord Chief Justice said, "That issue is practically given up," or words to that effect. And I hope, my lord, in his Summing-up, will point out to you the wickedness of propounding such a theory, and then abandoning it when it was proved to be false.

There is another slight mistake, to which I may here refer. BOGLE was asked: "Had you frequent opportunities of seeing Lady TICHBORNE?" The answer he gives is: "You mean Lady JAMES TICHBORNE?" One of the grand points made in the opening address of the learned Counsel for the Prosecution was, "Only conceive the ignorance of this fellow! ROGER TICHBORNE was brought up in the higher ranks of life, and knew their usages, and would know perfectly well that his Mother, not being the daughter of a peer higher than a Viscount, could not be addressed as Lady JAMES TICHBORNE. Nobody but an ignoramus would be guilty of that mistake, but it is quite compatible with the position of ARTHUR ORTON." Now there are several of Defendant's letters lying before my lord, and he will see that the dowager was addressed as Lady JAMES TICHBORNE, while Lady ALFRED TICHBORNE (as she was called) was in town, and it was done in order to prevent the letters being delivered to the wrong person. But directly she went to Paris the Defendant addressed his Mother as Lady TICHBORNE. Well, here we have BOGLE calling her Lady JAMES, and there are two instances where GOSFORD in his evidence alludes to her in a similar manner.

The LORD CHIEF JUSTICE: I do not think you quite appreciate the argument on the other side, but I won't state it if you don't like.

Dr. KENEALY: My lord, I should like you to state it.

The LORD CHIEF JUSTICE: The argument was, not that he

called her Lady JAMES TICHBORNE, but that when Mr. GIBBES reproached him in Australia for saying that his mother's name was FRANCES, he replied: "Well, they called her Lady FRANCES."

Dr. KENEALY: *My lord, that has nothing whatever to do with the point on which I was arguing.** Mr. HAWKINS made it a prime point in his opening statement that the Defendant called his mother Lady JAMES TICHBORNE. And I was showing that it was usual to do so by servants like BOGLE, by even clever people like GOSFORD, and by the Defendant, to prevent his letters being misdelivered. This has nothing to do with Lady FRANCES, as your lordship supposes.

Well, BOGLE is asked as to her "craze," and he replies: "I never saw any sign of craziness about her; anything but that;" meaning, I fancy, that she was rather sharp and shrewd. WILLIAM QUIN was in her service for six months, and up to the day of her death he saw her constantly, but saw no symptoms of craziness. His answer is, "quite the reverse." Then Mr. Justice MELLOR kindly interposes, and remarks that no Witness for the Prosecution had said such a thing. No. But his lordship forgot that Mr. HAWKINS had made a great deal of it; and that it seemed almost a familiar phrase in his mouth, when he told us so often that she was "a crazy old Dowager." However, his lordship was right. It was not proved, though boldly stated: and my Lord Chief Justice, by-and-bye, will tell you that you are not to mind Mr. HAWKINS'S Speech; but that you must have regard only to the evidence.

The LORD CHIEF JUSTICE: Quite true.

Dr. KENEALY: Yet speeches do make impressions that are not often got rid of: and in this Case if the Jury consisted of men of the most powerful intellect, they would not find it easy to separate in their minds the Speech of the Prosecuting Counsel from the proof which was afterwards given.

Mr. HAWKINS: My lord, I never insinuated that there was general craziness.

Dr. KENEALY: The learned Counsel had no right to insinuate that there was either general or particular craziness, without offering a particle of evidence to prove one or the other. What does Mrs. ALFRED HOWLETT say—the respectable person who keeps HOWLETT'S Hotel? Lady TICHBORNE had stayed there for some time; and I asked, whether she had observed any indication of craziness about her. Upon this, Mr. HAWKINS started up, and said, "I object to this." I thought that very cool: but I withdrew the question in deference to his lordship; though I do not admit that it was in any way irregular to put it. The official report does not contain what his lordship said; as I am sorry to say, it does not contain a great many things which do pass.

The LORD CHIEF JUSTICE: I think it probable that my suggestion was, *that there was no pretence for saying that* Lady TICHBORNE *was mad.*

Mr. HAWKINS: I deny having said that there was general craziness.

Dr. KENEALY: Mr. HAWKINS persists. He again abstains from his charge of general craziness. Will he assert that there was special craziness? If so, I should like to learn the proof. There is no evidence of any sort that this lady was under a delusion as to this gentleman being her son. Efforts have been made to prove her eccentricity—but they have ended in nothing: they have all failed.†

EDWARD HURST, the manager of 'Howlett's Hotel,' was the next Witness examined upon this point: and he said he never saw anything extraordiuary about her dress; that she paid her bills regularly: and was quick to discover any mistake. The next Witness was Miss CAROLINE GROVES, who had been lady's maid to Lady TICHBORNE for two years: and she gave evidence which I hope will satisfy you. Dr. TIMES was examined, and he said that from his knowledge of her he thought she was all right: and that she did not give him the impression of being a woman who could be easily imposed upon. He never saw anything about her that could lead him to suppose that there was any weakness of mind; but she was not a lady of much conversation. Mrs. THOMPSON keeps a lodging-house in Manchester-square; and Lady TICHBORNE lodged there for some time; leaving ultimately because her rent had been raised. She says that she was a perfect lady. Lady TICHBORNE told her that the Claimant was her son: and that he had a mark on his side with which he was born. Now I beg you to pay particular attention to this: because it is one of the fallacies in this Case that Lady TICHBORNE never knew of this mark. Your attention may be called to the fact that she professed not to have remembered it.

The LORD CHIEF JUSTICE (very earnestly, loudly and emphatically): *She states distinctly in some of her correspondence that she never knew anything about it.*

Dr. KENEALY: And yet may she not have said this through a morbid sensitiveness? May she not have desired to conceal, as a fact, that ROGER had a brown mark upon his side?

The LORD CHIEF JUSTICE: DO YOU SUGGEST THAT SHE WROTE THAT THE BROWN MARK DID NOT EXIST, KNOWING THE STATEMENT TO BE FALSE?

Dr. KENEALY: It is hard to put these questions to me, my lord.

The LORD CHIEF JUSTICE: *I only want to know what you suggest.*

Dr. KENEALY: The only answer I can give is this: that I should never think of saying that ROGER TICHBORNE was a deliberate liar because he habitually wrote to his friends and relations that he was well when we know that he was not well. I answer your lordship by that illustration. But I cannot guess what was in Lady TICHBORNE'S mind.

The LORD CHIEF JUSTICE: *Well, at any rate he told a lie.*

Dr. KENEALY: It was rather one of those falsehoods which your lordship thought to be venial.

The LORD CHIEF JUSTICE: I beg your pardon, I never said anything of the sort.

Dr. KENEALY: Your lordship quoted Dr. JOHNSON on the subject.

The LORD CHIEF JUSTICE: *Ah! that was a different matter!* I did not, however, say that Lady TICHBORNE was a liar; I wanted to know whether you suggested that when she wrote that she was wilfully concealing what she knew to be true?

Dr. KENEALY: I cannot answer for the dead. The Witness tells us that Lady TICHBORNE said "she knew him by a mark that he was born with, but I was not to say to anyone that she had said so." Why she should have been so sensitive, I do not know.

[The Court here adjourned for luncheon.]

After lunch, a Juryman rose and said—My lord, I made the remark yesterday that an attempt had been made to influence two of the Jury. I spoke on the impulse of the moment, but I think I ought to explain that it is a fact that a person did call upon two of our body and endeavoured to persuade them to return a verdict—*I don't say on which side*, because I do not wish to prejudice the Case, *but the party who waited on the Jurors was evidently in favour of the Defence.*

The LORD CHIEF JUSTICE: I won't assume that the Defendant had anything to do with it.

The DEFENDANT (warmly): I assure you, my lord, I know nothing of it.

The LORD CHIEF JUSTICE: No—No—no one can think you did.

Mr. HAWKINS: I am glad the Prosecution is relieved from the suspicion of any such thing.

Dr. KENEALY: I cannot allow that observation, because it transfers the burden to the Defendant.

Mr. HAWKINS: I don't at all intend to insinuate that the person referred to came from the Defendant at all.

The LORD CHIEF JUSTICE: No one suggests that.

A JURYMAN: It never occurred to any of the Jury that the Defendant knew about it.

The LORD CHIEF JUSTICE: Oh, no, it has been some indiscreet partisan.

Dr. KENEALY: I cannot admit that it was a partisan of ours.

The LORD CHIEF JUSTICE: I do not think it would be well that this matter should go any further. A Gentleman of the Jury having made a remark yesterday, has thought right to remove any possible misunderstanding by stating what really did take place. The Defendant has declared that he had nothing to do with it, and we are quite ready to believe him. It would be not only a most improper but a most imprudent thing on the part of any person in his position to sanction such a proceeding, and we cordially accept his denial.

Dr. KENEALY: He had nothing to do with it.

Mr. Justice LUSH: You don't desire more explanation, Dr. KENEALY, than you have got?

Dr. KENEALY: I cannot imagine any *real* friend of the Defendant doing it. I can imagine an enemy in the guise of a friend.

The FOREMAN: The expression which the person made use of was that he was interested for the Defendant, and he also referred to another gentleman.

The LORD CHIEF JUSTICE: I think the discussion had better be discontinued.

Dr. KENEALY: Gentlemen, I was speaking of Mrs. THOMPSON, when we adjourned. She swore that there was nothing in the least like insanity in Lady TICHBORNE; nor did she seem to be a person likely to be imposed on. She was not eccentric, nor a slattern in her dress; she dressed plainly, and was always tidy and neat. She declared her grief that her family should think she wished to defraud her grandson of his right; and at their supposing that she could be lunatic enough not to know her own son. My friend, Serjeant PARRY, thinking apparently that it was hopeless to carry on any farther this notion of her being crazed, said he had no question to ask, and no doubt he exercised good discretion. The next Witness was WILLIAM FORWARD, a serving-man who had been in attendance on Lady TICHBORNE. He said she was very particular about money matters, but had no peculiarity that could make anyone think her to be crazy. That completes the testimony upon this point, and I must ask you to exercise the very severest judgment you can upon a Prosecution that has dared to malign this lady in her grave, and has sought to fasten upon her the imputation of craziness; for, notwithstanding that the imputation seemed to have been abandoned, Mr. HAWKINS has been instructed to get up to-day and suggest that she was insane upon a particular point. They have done all they could to defame and blacken her, and to prejudice you against her. This falsehood, for such I may call it, is well supplemented by the infamous evidence of Mr. CUBITT, who has suggested that she made to him the offer of a licentious intrigue. (Sensation.)

* Nobody knew this better than the Chief Justice. But he thought he would not miss the chance of artfully reminding the Jury of a weak point.

† See Vol. VI., page 228.

The LORD CHIEF JUSTICE: Is that the construction you place upon it?

Dr. KENEALY: Undoubtedly, my lord, it means that, or it means nothing.

The LORD CHIEF JUSTICE: I confess it did not strike me so. It is a pity he was not cross-examined, if his words can possibly have such a meaning. It seems to me an impossibility.

Dr. KENEALY: I don't know what people mean. I can only draw deductions from their words. The passage to which I refer is as follows:—

"Mr. Serjeant PARRY: Will you tell me the conversation as nearly as you can?—Lady TICHBORNE asked me if I would go to the Pyrenees with her.

"The LORD CHIEF JUSTICE: The Pyrenees?"

Your lordship might well be astonished. (Laughter.)

"Mr. Serjeant PARRY: Will you tell us exactly what the lady said at the interview?—I think she asked me to live at the hotel close to her, that I might be always near her."

If you like to put an innocent interpretation upon these words, it is in your power to do so; but in ordinary speech, I should have thought that when an elderly lady—(laughter)—makes a proposition of that sort to a very likely young man as this FREDERICK CUBITT seemed to be, it can only have one meaning. See what follows. She afterwards remarked:—

"But I don't know, perhaps people might talk."

If you can put an innocent interpretation upon that, you will; but if such language had been used in the Divorce Court, what would you have said?

A JUROR: It was not in the Divorce Court.

Dr. KENEALY: No, but there is the same law of evidence there as here. Suppose you were empannelled as Jurors there, and it had been proved that a wife said to the co-respondent what CUBITT swears that Lady TICHBORNE proposed here, could you come to any other conclusion than that they meant what I have suggested?

The LORD CHIEF JUSTICE: Would it not depend a little on the age of the parties? (Loud laughter.)

MR. FREDERICK BOWKER, OF WINCHESTER.

Dr. KENEALY: I don't know that the age of the party makes any difference.

Mr. TAYLOR (on the Jury): She looked upon him as a person who she thought had seen her son ROGER.

Dr. KENEALY: What an innocent view to take of it. I do not know whether that view is peculiar to one member of your body.

The FOREMAN of the JURY: I think we all have the same opinion upon that.

Dr. KENEALY: If you all agree in that matter of course I must be wrong in supposing that CUBITT meant it innocently. But taking the words in their plain meaning, considering that this was a man whom she never saw but once, I do think that there is a great deal in it. That may appear very ludicrous to some persons. It does not appear so to me. My friend, Serjeant PARRY, whispers that I have "no sense of humour," and treats it as a funny joke. Well, if I am gravely asked to treat this proposition as a humorous one, I own I cannot. I draw only one interpretation from the language which that man thought fit deliberately to use in connection with Lady TICHBORNE, and that is an idea of an improper character.

Mr. Justice LUSH: Did she not follow it up by saying that he should go to see her son?

Dr. KENEALY: No, certainly not; as your lordship will see, if you refer to his evidence.* Why she should ask him to go with her to the Pyrenees I cannot understand. I do not believe a word of it, and I put it to you whether a woman like this, with her excellent habits of business, would make such a proposition. I invite you to believe it to be untrue from beginning to end. Why she should spend a considerable sum of money in going to the Pyrenees with FREDERICK CUBITT, when she was expecting to see her son in England, I cannot conceive. But perhaps this evidence was offered as proof of her craziness. If it were credible,

* See the evidence of this man, Vol. I., *Trial*, pp. 203-210.

it might tend in that direction; but my contention before you is, that it is incredible.

Gentlemen, that is not the only way in which this Prosecution seeks to malign that Lady. Remember, there was no necessity whatever for their putting in the letter of Mr. JAMES TICHBORNE in which he spoke so harshly of her. It was not a letter bearing on this Case, but written by him when in an ungovernable passion to her father. Neither does the testimony of CUBITT bear upon the Case, except to defile her memory in her grave. That evidence of Mr. CUBITT's is capable of an innocent interpretation, but it is also capable of a guilty one; and I am warranted in coming to the conclusion that the man meant you to put a guilty interpretation upon it. But they say this is the vile person she was; she was a licentious woman. She wickedly took up this Defendant as her son without thought or examination. She offers herself to CUBITT. If they will do this, is there anything too foul which they would not insinuate concerning her? They do not hesitate at any step which may be calculated to malign her character. If her brothers had come forward and said that they made allowances for her weakness, and had compassion on her, and spoke of her with gentle tenderness, one could understand them, for this would be consistent with weakness of intellect. But they represent her to you as a deliberately wicked woman. Mr. ALFRED SEYMOUR in effect says: "My sister was perfectly well acquainted with the fact that this man was an impostor, but for some reason which I am not able to explain she was willing to take anybody to her arms and welcome him as her long-lost son rather than that the sole representative of her second son, ALFRED, should succeed to the estate, and for that wilful act I hope she is grilling in hell."

A JURYMAN: Mr. ALFRED SEYMOUR denied that.*

The LORD CHIEF JUSTICE: He did not admit it.

Dr. KENEALY: Mr. ALFRED SEYMOUR, a Member of Parliament, saying, "I do not remember it," is an admission that he said it. Why, all the perjured Witnesses at the QUEEN'S Trial went off with their "non mi ricordo," and he said he did not remember it. He, a Member of Parliament, was ashamed in open Court to admit that he said those words, but he was afraid of the penalty when I reminded him that two gentlemen of high standing and honourable position were at his side. Therefore, I take the answer that he gave as an admission. Well, then, what does that show and prove? Not that he looked on her as an innocent victim of a delusion, but that he looked on her as a false and malicious woman in welcoming this man, whom she knew to be an impostor, in consequence of some supposed hostility to her own grandchild. I say that the language of Mr. ALFRED SEYMOUR is reconcilable only with a guilty and wicked design on her part to welcome anybody, no matter where he came from, in order to oust her own grandchild, and it is in order to substantiate that idea that they keep bringing these nasty and shameful letters before you, and asking those nasty questions. I am entitled to take that ground. I should not have ventured to take it but for that extraordinary scene in the lobby of the House of Commons, which seems to me to shed a flood of light on this Case; and to prove incontestibly that she was not crazed, in their opinion; but had coolly and deliberately, with all her senses perfect, lent herself to an abominable fraud. Why, what would they have done—what were they bound to do, if their sister was out of her mind, when she took up this Defendant as her long-lost son? Surely if she was not answerable for her actions, she is not "grilling in hell." Mr. ALFRED SEYMOUR does not remember that remarkable phrase. If anyone of you had used it with reference to a dead sister, would you be likely to forget it? He does not forget it—but he dare not deny, lest he may have to answer for that denial. But the phrase used, indicates sanity—but guilty sanity. They are now driven to pretend that she was not a responsible agent. Was she crazy upon that point or not? Mr. HAWKINS says she was. The law was open to them. When the Defendant came home to this country and was welcomed to his mother's arms, what could the SEYMOURS have done? They might have obtained a Commission of Lunacy, and have called evidence to satisfy a Judge sitting on that Commission that she ought to be put under restraint, and removed from the influence of the man who was deluding her. Did they do so? We know they did not; and why? Because five minutes' conversation between Lady TICHBORNE and the Commissioner would have made him rise with indignation, and say, "What do you mean by this? You ask me to confine this lady on the charge of aberration of intellect when she has a mind in the highest degree cultivated, and is perfectly sane. Go away." She had an income of more than £2,000 a year, so that they had a sufficient pecuniary inducement to adopt this course.

The LORD CHIEF JUSTICE: Had she so much? She had an interest of £27,000.

Mr. CHAPMAN BARBER: Yes.

The LORD CHIEF JUSTICE: She had the interest of £27,000 during her husband's life, and command of the capital at his death, and what was left of the 450,000 francs which came from the French family.

Dr. KENEALY: I somehow have it in my mind that she had £2,000 a year.

The LORD CHIEF JUSTICE: I don't know where you got the idea from, as we know exactly what she had.

Mr. CHAPMAN BARBER: She had a jointure of £1,200 a year on the Tichborne Estates, in addition to the sums Mr. DANBY SEYMOUR mentioned.

The LORD CHIEF JUSTICE: I never heard that before. We began our history in 1814, and I suppose that was an older settlement.

Mr. CHAPMAN BARBER: It was, my lord.

The LORD CHIEF JUSTICE: That is in addition to the sums Mr. DANBY SEYMOUR spoke of?

Mr. CHAPMAN BARBER: Yes.

Dr. KENEALY: Gentlemen, I was right. She had upwards of £2,000 a-year, and the letters that are before you show that she allowed this man £1,000 a-year. Every week she sent him a cheque for £20 or £25, and in addition to that she paid his house rent. The family had two courses before them. The first would not cover them with infamy. It was to allege that she was crazy. But the conduct I have brought before you, the conduct of the French priest who was getting money from her, the conduct of everybody connected with this Prosecution, has proved to you that her intellect was not weak in the least degree. That failing, they are obliged to fall back upon the other course—to say that she was a wicked woman, and that she was against a particular branch of the Tichborne Family, because they would not ask her to their houses; and that, in revenge, she took this course. I do not know how you look at the matter. Of course if you take the lenient view, you will say their conduct was not reprehensible. But I ask you not to take the lenient view. These people are coming into this Court to kill this man, because—let there be no mistake about it—penal servitude for this Defendant means death. Let there be no mistake as to that issue. Send him to penal servitude, and you may as well take his blood; and therefore I cannot be gentle, I cannot be lenient, looking at this Case from the standpoint that I occupy; bound to believe that I represent an innocent man, that I represent the real ROGER TICHBORNE—bound to put him before you under those circumstances, bound also to believe that the family know he is the man—how can I take a lenient view in a matter where the life or death of my Client is involved? That is the real issue. Do not lose sight of it. They have brought Witnesses here who have sworn he is not the man, and I have brought nearly 200 Witnesses to swear that he is the man. Do any of the NANGLES or the SEYMOURS believe that that is ARTHUR ORTON? Why they would laugh at you in the face if you asked them such a question in private. Is there a human being on earth who has followed the evidence who thinks that that man is ARTHUR ORTON? I should insult your understandings if I supposed that you thought so. I could show you the irresistible strength of my ORTON evidence as contrasted with the contemptible weakness of their ORTON evidence. So far from being an advocate of Trial by Jury, I should say that that mode of Trial should be abolished if I thought that any man on that Jury could believe that he is ORTON. Then if he is not ARTHUR ORTON, who is he?—because they have pinned themselves to their ORTON theory? They dared not do it in the former Trial, but they do it now. If he be not ORTON, it follows irresistibly that he is TICHBORNE, because he can be no one else. They say, "We have ransacked the earth, and we have evidence to show that this man is ORTON." If I show that he is not ORTON, as I believe I have shown, and I believe I shall carry you with me when I go through the testimony, where will they be then? How can any of you think that any of those persons imagines that he is ARTHUR ORTON? They may have known him, and would not look upon him. Fathers and mothers have passed their children in the streets, and would not look upon them, although their hearts may have been bleeding underneath; but, by the force of circumstances, they were obliged to disavow their own flesh and blood. And so, also, these persons, believing he was a dishonour to them, may have nerved themselves to a similar resolution. But as to the ORTON notion, I cannot imagine that they ever entertained it for a moment. Whether they are acting under a sort of imperative necessity that makes them feel that they ought to do this thing I know not. Whether all the females of the family are leagued against him it is not for me to say. We know how clannish women are—that they will fight for each other, and go great lengths for each other—and if that man had been an impostor, the very last thing he would have thought of would have been to excite the animosity of any member of the family against him; he would have endeavoured to conciliate them. But the man never does so. On the contrary, he has exhibited a species of defiance that ARTHUR ORTON never would have dared to exhibit. "Why did he not go and visit Mrs. GREENWOOD?" asks Mr. HAWKINS. "Why did he not go and visit Colonel GREENWOOD? All he had to do was to present himself at their hospitable houses, they would have welcomed him as their prodigal son." If he had been ARTHUR ORTON he would have done so. But he tells you in his evidence that long before he came to this country, when he was in Panama, and when he was in New York, he read paragraphs in the newspapers denouncing him as an impostor; and he would not humble himself by going to his relations, because he knew that he was not an impostor. He said to himself, "I defy you. If you had suspended your judgment till I came back, I should not have blamed you. You had a right to suspect me, because I had absented myself from my home for so many years; but I have read in the papers paragraphs denouncing me as an impostor, and therefore I will not treat you as my friends and

* See Mr. ALFRED SEYMOUR's evidence, Vol. II., page 20.

relatives." That may not have been wise. It may be expedient to assume a crawling and cringing attitude towards those who have it in their power to injure us, but for my own part I admire the sturdy pride which made the man say, "No, I will not go near you. I am the head of this family; you may come to me if you like, but I will not demean myself by going to you." I will tell you what a false man would have done. ROGER TICHBORNE was a Catholic, and a false man would have said, "I must be a model Catholic;" and he would have gone about to the priests, and he would have written to Abbè SALIS, and he would have endeavoured to conciliate them by supporting the rights of the Church. And he would have gone to Stonyhurst and gone down on his knees, and been exemplary in his devotions, and he would have observed the fasts and feasts of the Church. But the Defendant did none of these things. He has said in effect, "Since I was in leading-strings my views have been enlarged; for good or for evil my mind has taken a leap out of the trammels with which it was once bound. I entertain a different view of my rights and liabilities from that which was taken by my ancestors, and I do not mean to allow the Church 15 per cent. of my income. I mean to be a free man, and not to be a slave to your superstition." Gentlemen, all these, in my humble judgment, are strong arguments to show that this man is no impostor, because he adopted the very opposite course which a scheming impostor would have adopted.

Mr. Justice LUSH: Can you refer me to the page of the evidence in which he says that he read the newspaper paragraph in New York? *

Dr. KENEALY: I cannot put my hand upon it at this moment.

The LORD CHIEF JUSTICE: *As you may have some difficulty in finding it now*, you can refer us to it on Monday morning.

[The Court then adjourned until Monday at eleven o'clock.]

* The reference will be found at page 1848, of the Claimant's Re-examination, and is as follows:—

"Were you afterwards detained at New York?—I was detained at Panama three weeks. The child was ill, and my family getting sick. I did not stay longer, I went on to New York, which was the only place I could go to except Chili or California.

"You then went in an American vessel I suppose to New York?—An American Steamer.

"When you arrived at New York, did you hear anything about yourself?—Yes, I went to the Clarendon Hotel and took apartments there for my family and came down into the smoking-room and looked at the paper. The first thing I saw was, 'An extraordinary circumstance: An English Baronet a Butcher in Australia.' One of the most scandalous articles I ever read.

"You say you saw a newspaper in which there was some description. Had you known up to that time that you were denounced as an impostor?—No, not the slightest in the world. Up to that time Mr. CHARLES CLIFFORD gave me to understand that I would have some legal difficulty before I got my property, but I never thought I was going to be denounced as an impostor, or anything of the kind."

☞ For continuation of Dr. KENEALY's Summing-up for the Defence see *Post* One Hundred and Thirty-Ninth Day, Thursday, December 11th, 1873.

ONE HUNDRED AND THIRTY-SIXTH DAY.—MONDAY, DECEMBER 8th, 1873.

Mr. HAWKINS: My lord, the Witnesses with respect to whom an application was made to your lordship in your private room the other day, are now in attendance, and JEAN LUIE has also been brought from Holloway. Will you permit him to be brought into Court at once, and sit there (opposite to the learned Counsel)?

The LORD CHIEF JUSTICE: Certainly.

(JEAN LUIE, in the custody of the Governor of Holloway City Prison, was then brought into Court.)

Dr. KENEALY: I understand these Witnesses are about to be called for the purpose of re-opening the rebutting Case on the part of the Prosecution?

The LORD CHIEF JUSTICE: Yes.

Dr. KENEALY: Of course your lordship will understand that I can be no consenting party to our doing so, after the Case for the Prosecution has closed.

The LORD CHIEF JUSTICE: Dr. KENEALY, we have decided this.

Dr. KENEALY: I thought any decision made in Chambers might afterwards be reviewed.

The LORD CHIEF JUSTICE: Certainly not; it was your own option whether it should be at Chambers or in open Court. You preferred that it should be at Chambers, and we heard it and decided.

Mr. Justice LUSH: It is simply a Court sitting without the public, at your request.

The LORD CHIEF JUSTICE: Which we did lest in the event of the application failing any privilege should be infringed.

Dr. KENEALY: I mention it only that it may be understood that the Defendant does not withdraw his objection to it; that is all.

The LORD CHIEF JUSTICE: Oh, very good. We quite understand that.

WILLIAM WOOD, sworn.

Examined by Mr. HAWKINS.

Are you an Assistant Warder at the Convict Prison at Chatham?—Yes.

Had you in your custody at Chatham, as Convict, a Prisoner who passed by the name of JOHN LUNDGREW?—Yes.

When was he received in custody in the Prison?—In 1868.

Was that under a sentence of penal servitude?—Under a sentence of penal servitude for seven years.

Dr. KENEALY: My lord, I object to a question that is purely collateral. The only ground on which it seems to me any evidence in this matter is as to identity, and surely his sentence is entirely collateral.

The LORD CHIEF JUSTICE: But the period of the sentence and the time for which the sentence, and during which he remained, are essential and necessary to the inquiry.

Mr. HAWKINS: When was he discharged from the Chatham Prison?—On the 25th March, 1873.

Mr. Justice MELLOR: March last?

Mr. HAWKINS: On license?—Yes.

Mr. Justice MELLOR: Is that what is commonly called a ticket-of-leave?—Yes.

Mr. Justice LUSH: The sentence had not expired?—No, the sentence was not expired.

Mr. Justice LUSH: Does it appear when the sentence was passed, Mr. HAWKINS, which he received in 1868?

Mr. HAWKINS: This Witness does not prove it. I shall have a certificate to prove it.

Mr. HAWKINS (*to Witness*): During the time he was in Chatham how was he occupied?—He was occupied most of his time in the tailor's shop.

Was he during his detention in Chatham under your personal supervision much?—Yes.

That is to say did you see him daily?—I saw him daily from October, 1871, until the month of April, 1872; he was under my charge.

And from April, 1872, how frequently did you see him?—Almost daily.

During how many hours of the day are the men at work so as to be under your active supervision?—About ten hours in the summer, less in winter.

Mr. Justice MELLOR: What time in the winter?—It differs in winter according to the length of days.

Mr. HAWKINS: On the 4th of December, 1873, did you go to the Prison at Holloway?—Yes, I went to the Prison at Holloway with Inspector CLARKE.

Were you there shown a person who was described as JEAN LUIE?—Yes.

Is that the person (pointing to JEAN LUIE)?—That is the same person. I identified him at once.

Is that the man who was in custody as a Convict, as you have told us, at Chatham?—Yes.

The same you have been speaking of as LUNDGREW?—Yes.

Cross-examined by Dr. KENEALY.

I suppose you and CLARKE had a good deal of conversation about this Case on your way to Holloway?—No, none.

Now that you mean deliberately to swear?—Yes.

It was never once mentioned?—(*The Witness paused*).

The LORD CHIEF JUSTICE: Do answer the question?—No, it was not mentioned, only for me to identify the man.

Dr. KENEALY: Where did CLARKE meet you?—Scotland Yard.

Did you know what you were brought up to town for?—To identify the man.

Where did you learn that?—I learned it in Chatham.

From whom?—From the Chief Warder.

To identify LUIE as LUNDGREW?—Yes.

Did you come up alone?—Yes.

Who was the first policeman at Scotland Yard you saw?—The policeman on Scotland Yard, in the Hall there.

Did you have no conversation with him about the Case?—None, only to identify the man. He asked me if I was coming to identify the man. I told him "I am come to see Mr. CLARKE to identify the man."

Who was the policeman, do you know?—No.

He asked you whether you had come to identify him, and then took you to CLARKE, is that it?—No, took me to the office, and I waited there until Mr. CLARKE came at nine o'clock.

Did CLARKE tell you that LUIE had been complaining of the conduct of the Detectives in following him?—No.

Did you inquire whether LUIE had made any complaint at Scotland Yard about the conduct of the Detectives?—No.

Did you hear of it?—No.

Mr. HAWKINS: I do not know how that would be evidence.

The LORD CHIEF JUSTICE: No.

Mr. Justice MELLOR: However, it is answered.

Dr. KENEALY: Did you know that he went regularly to the Treasury for his money every week?—I know nothing about it.

Now, where a prisoner is sent to prison, is there a description of him entered in the official books?—That I do not know; that lies with the Clerks.

How long have you been there?—I have been there from September, 1868.

And you really say you do not know whether prisoners sent there are described minutely in the official books?—I do not know anything about it; it is not my branch at all.

Is the man here who keeps the book?—I do not know.

Who is the man you say whose duty it would be, if the duty existed?—The Clerk's duty.

What is his name?—I do not know his name; several Clerks. I could not tell which keeps the book.

As far as you know, are not the descriptions of the men sent to the Prison entered?—I could not speak to that; it is a thing we never did.

Are there photographs taken of those persons?—There are photographs taken of those persons on leaving.

Have you any photographs here of the man you call LUNDGREW, when he left?—Yes; I have one here.

I should like to see it.

(The photograph was produced and handed to the learned Counsel.)

When was this taken?—Taken about a month before his leaving the Prison; generally about the time they are taken, about a month before leaving.

Did you see this taken?—No.

Are these the prison clothes, or the man's own clothes, that he is taken in; can you tell me?—I cannot tell you. I am not there.

Now I see that the description of LUNDGREW upon this paper is this——

Mr. HAWKINS: My lord, that had better be put in at once.

Dr. KENEALY: I am sure it ought to have been put in by the Prosecution, not by me, but I do not care about it.

Mr. HAWKINS: I put it on the part of the Prosecution.

The LORD CHIEF JUSTICE: Yes, I so understand it.

Dr. KENEALY: I see the description here, "both little fingers crooked;" is that correct?—That I could not speak to. I do not speak to any marks whatever.

I thought you said he was under your daily supervision. I do not know how many hours a day for?—But I did not pay any attention to any marks whatever. I only looked after them that they do the work.

Who was the man who entered "both little fingers crooked?"—The man who takes the marks.

Do you know this writing?—No.

Why, you do not seem to know very much, I am sorry to say?—I have nothing to do with it.

The LORD CHIEF JUSTICE: I suppose you are going to call some one?

Mr. HAWKINS: Yes.

Dr. KENEALY: I should have thought that some one would have been best. Now, I should like to know?

Mr. HAWKINS: I believe I have the Witness here who took the photograph.

Dr. KENEALY: I am not on the photograph at all, but on the marks.

The LORD CHIEF JUSTICE: I beg your pardon. You may be at cross purposes. What I understand is, this all would be done at once. The man's photograph is taken, and then the various peculiarities, the age, height, and hair, are all put down at the time it is taken. I may be wrong, but that is my impression. I suppose whoever comes will tell us. For instance, the man is going away from Chatham in the month of March, and this document with the photograph is dated the 15th of March; therefore, at that time the photograph is taken, and all those indications of appearance and characteristics are put down.

Dr. KENEALY: If that is so——

The LORD CHIEF JUSTICE: I will tell you why. The document is dated the 15th of March, and therefore I presume everything founded afterwards upon it is of the 15th March.

Dr. KENEALY: Yes; but it may happen that one takes the photograph and another gives the marks. Can you tell me whether the same man takes the photograph as the one who describes the marks?—Different men altogether. The Schoolmaster takes the photograph; the Clerk takes the marks.

The LORD CHIEF JUSTICE: And is it done at the same time?—No, I think not.

Dr. KENEALY: Is the man here who takes the marks?—The man is here who takes the photographs.

I am much obliged to you; but I asked, is the man here who takes the marks?—I do not know.

The LORD CHIEF JUSTICE: You had better see, Mr. HAWKINS, that you have all the people here.

Mr. HAWKINS: I believe I have.

The LORD CHIEF JUSTICE: Dr. KENEALY should be satisfied as to who takes the marks on those photographs. I think that is but right.

Mr. HAWKINS: I did not purpose to put this in, but the Defendant's Counsel asks for the photograph, and I put it in.

Dr. KENEALY: Of course.

Mr. HAWKINS: Then, in my own discretion, I shall call others in different order.

Dr. KENEALY: As I understand, you cannot give any description of the man except that you swear that is the man?—I swear that is the man.

That is all?—That is all.

Did you see the photograph of LUIE before you saw himself?—Yes.

Who showed you that?—The Clerk.

Mr. Justice LUSH: Do you mean the photograph on the paper?

Dr. KENEALY: No; the one published all about London.

The LORD CHIEF JUSTICE: I do not think he understood that.

Dr. KENEALY: Did they show you any photograph different from this one?—Yes; they showed me LUIE taken in town.

Mr. Justice LUSH: Before you went?—Before I went.

Dr. KENEALY: Who showed you that?—Inspector CLARKE.

Did not he have a bit of conversation with you when he was showing you that?—(No answer.)

The LORD CHIEF JUSTICE: What do you say?—No conversation.

Dr. KENEALY: He merely showed it you?—He merely showed it to me, and I said it was the same.

Simply showed it to you, and did not say a word, and you said, "It is the same"?—That is correct.

Did you see LUNDGREW the day he was dismissed?—No.

How long before he left did you see him?—About a week or so.

You gave me two dates that you saw him daily—from October, 1871, to April, 1872; am I to understand after that you had no official communication with him, but simply saw him?—No; I had no charge of him after that date.

You had no charge of him after April, 1872?—Yes.

You merely saw him promiscuously about the place; is that so?—That is so.

Do you know anything about LUNDGREW's ticket-of-leave?—None.

You do not know whether he had one or not?—No.

Except that you imagine he had?—They all have that.

He ought to have had; but whether he had one or not you cannot tell?—No.

Where did you see LUIE at Holloway?—I saw him in bed in his cell.

When did you see him?—On the 4th of December.

That was on Friday last?—On Friday last.

Was anybody there when you saw him?—One of the Prison Officials; I do not know what rank he was.

Was CLARKE with you?—CLARKE was with me.

After you saw him on your way back from Holloway to Scotland Yard, did you have any conversation with CLARKE about the Case?—No more than told him I was positive sure that that was the same man.

You said that at Holloway, you know?—Yes.

And did you come back with CLARKE?—Yes.

Did you have any conversation with him or not about the Case?—That was all the conversation. I said I was positive sure he was the man.

You told him you were positive sure he was the man, and I suppose CLARKE said, "That's all right"?—He might have said something of that sort.

Have you been back to Chatham since?—Yes.

When did you come from Chatham again?—This morning.

How many people came from Chatham with you?—Ten.

I suppose you all had a good bit of conversation this morning about it?—General talk.

You talked of nothing else, I suppose?—Oh, yes.

What, on your way up?—Yes.

Are they all Warders, or Convicts, or what are they?—They are all Warders, two Schoolmasters and eight Warders.

No Convicts?—No Convicts.

No Clerks?—No Clerks.

Are they the Schoolmasters?—No; Warder Clerks, Discipline Clerks.

Eight Warders, including two?—No; there are eight Warders, and two of them Discipline Clerks.

Eight Warders, and two of them Discipline Clerks, and two Schoolmasters?—Yes.

And you all pretty well agreed LUIE was LUNDGREW?—Well, we did not fall out. (Laughter.)

And were the photographs handed about?—Yes.

Mr. Justice MELLOR: Which photograph do you mean,—the one of LUIE, or the one from the Prison?

Dr. KENEALY: Was not the other handed about?—Yes.

Then, why did you answer my lord in that way if it was. How many photographs of LUIE were handed about?—Two.

Have not you seen three different ones of him?—Yes, I have seen three with that one this morning.

The LORD CHIEF JUSTICE: What the gentleman is asking you is, how many photographs were shewn among you this morning as you came up?—Two.

Is that those in the shop-windows?—One in the shop-windows as LUIE, and one from the Prison.

And one as LUNDGREN?—Yes.

And you were all comparing them, I suppose?—Yes.

A JUROR: When the Prisoner LUNDGREN worked in the tailor's shop, did you notice anything about his hands particularly?—I did not pay any attention to his hands particularly. I could not swear to the hands.

WILLIAM GEORGE WOOD, sworn.

Examined by Mr. Serjeant PARRY.

Are you the Principal Warder in the Chatham Convict Prison?—I am one of them.

Had you a Prisoner under your charge there of whom that is the photograph? (Handing it.)—Yes.

When did he come into the Prison?—He was received at Chatham on the 7th September, 1868.

And when did he leave?—The 25th of March, 1873.

Where did he come from in 1868, when he was received into the Prison?—I am not in a position to say.

Now, during the period you have mentioned in 1868 down to the 25th March, 1873, did you see that Prisoner regularly?—I did.

And did you thoroughly know him?—Yes, I did.

The LORD CHIEF JUSTICE: I believe every Prisoner under sentence of penal servitude undergoes some months' imprisonment prior to being sent to the penal servitude establishment?

Mr. Serjeant PARRY: So I understand.

Now, have you seen him since?—Yes, I saw him this morning.

Where is he now?—That is the man. (Pointing to JEAN LUIE.)

By what name did you know him?—JOHN LUNDGREN.

Did you upon any occasion speak to him?—Yes.

In any language other than English?—Yes, on one occasion.

About when was that, do you remember?—Well, that I cannot say.

Was it early?—It was shortly after he joined the tailors' party. He was removed from the yard labour party outside—public works—into the Prison, where he was employed in darning stockings in the tailor's shop.

When was that?—On the 7th July, was transferred from the outside, public works, to the inside of the Prison.

July what year?—7th July, 1869.

And how long did he work, do you remember, in the tailor's shop?—I could not be positive on that head, but, to the best of my knowledge, it was the month of April, 1872. He was promoted to the special class in the beginning of that month, and in the latter part of that month he was transferred from the tailor's shop into the drivers.

The LORD CHIEF JUSTICE: What are the drivers?—Convicts employed in driving horses.

Mr. Serjeant PARRY: Then he was in the tailor's shop till April, 1872, and then was transferred to the drivers?—Yes; about that time, about the latter part of April, 1872.

You say shortly after he was in the tailor's shop you spoke to him in German, did you say?—Yes.

What did you ask him?—I asked him if he was a German.

What did he say?—He said no.

In what language?—In the German language.

What did you say to him then?—I asked him in English then, to what nation did he belong to, and where he came from.

And what did he say?—He told me Belgium. He said, "I am a Belgian."

Did you ask him anything further?—Yes.

Tell us.—I asked him, if it was a fair question, what occupation he might have followed outside the Prison before being transported, and he told me he had been mate of a vessel for several years.

The LORD CHIEF JUSTICE: What led to your asking him those questions? Did you observe that his accent was not that of an Englishman?—The clothes are exchanged on Saturday night in the Prison. All articles of Prisoners' clothing are exchanged and taken to the shoemaker's and tailor's shops, and kept there until 9 o'clock on Monday morning, when the stores are opened, and when all those stores have to be counted into the Steward's stores in return for serviceable articles they issue on the Saturday.

But did you observe his language was not that of an Englishman?—Yes, because when I spoke to him about handing over the things, he answered me, and I could not understand what he said, and then I asked him whether he was a German.

Mr. Serjeant PARRY: When he said he had been mate of a vessel for several years, do you remember whether he said anything to you as to where he had sailed?—To all parts of the world.

Now are there some Prison regulations as to Prisoners being allowed to grow their beards a short time before they leave, when it is known they are going to leave?—Yes, I will read it to you—"45, Parliament-street, 25th January, 1867. Convicts allowed to grow their hair and whiskers within three months of their discharge. With reference to standing order, No. 66, paragraph 2, it is ordered, when a Convict is within three months of being due to be discharged, either by license or by expiration of the sentence, he is to be allowed to grow his hair, moustache, beard, and whiskers a moderate length, and Governors of Prisons are not for misconduct to order the same to be cut without special authority of the Visiting Director. (Signed) E. Y. W. HENDERSON."

That is a regulation?—That is a regulation.

In consequence of that regulation, was the person you knew as LUNDGREW or LUNDGREN allowed to grow his beard or moustache, &c.?—Yes, and did so.

From what date, do you remember?—Yes, he grew it from the 25th December, 1872, to the date of his discharge.

That is the 25th March, as we have heard. Now is that photograph a photograph of him at the time of his discharge?—It was an excellent one.

Cross-examined by Dr. KENEALY.

Did you see him at the time of his discharge?—I saw him. I think it was the day previous to his being discharged—no, two days previous to his being discharged from the public works.

You saw him two days previous?—I could not be certain about the two days or the number of days, but I saw him a few days prior to his discharge.

Was he ever at all under your personal supervision?—Yes, oftentimes.

In what respect, I want to know?—Well, I have had him in charge whilst at the stores, as I have mentioned before.

That is some time ago?—Yes, and I have had him in my charge——

Stop a while; let us go by steps. How long is it since he was under your personal supervision at the stores?—It was between the date of his reception at Chatham—I may say almost every day between the date of his transfer to the tailor's party at Chatham until the 10th August, 1872.

Down to the 10th August, 1872, from some day preceding that you do not remember?—He was employed in the next shop to where I was employed, and from the 10th March, 1872, or rather from April.

What are these things you are looking at there? Are they made by yourself?—Yes.

When did you make them?—There is not the information here that I am speaking of. These are only copies of the records at Chatham.

Don't you mind copies. I want to know when he was under your personal supervision first?—From the 7th July, 1869.

Down to when?—Down to the day he left.

Not your personal supervision always, because the last man told us he was under his?—Yes, but I was employed in the next shop to him, and saw him as many as two or three hundred times during the day, every time I turned round in my shop. He was sitting in front of me, the same as that gentleman might be over there (pointing to a Juryman in the box).

You ought not to have said under your official supervision. I want to know whether he was ever under your official supervision?—Yes.

When?—I could not state the dates, but different times during that period.

And down to the time that he continued in the tailor's shop, you saw him two or three hundred times every day?—Yes, mine was only a short shop, and every time I turned round, walking up and down, I saw the man.

After that, had you anything to do with him officially? I mean, did he belong to any people you had official guardianship over?—Yes.

When?—From the date of joining the drivers until the time of his discharge.

From the date of his joining the drivers until the date of his discharge he was under your official supervision?—Yes.

Now you say three months before they get a ticket-of-leave they allow their beards to grow?—Yes.

How do you know three months beforehand when they are going to get a ticket-of-leave?—There is one of those books kept in each division, and each division has an initial. There is a D division, and that is the division to which he belonged, and as soon as the man is due, it is sent out from the Governor's office through the Chief Warder's office, and then to the Principal Warder in charge.

What do you mean by being due?—When the Prisoner is due to grow his hair.

I thought you said that they allowed ticket-of-leave men to grow their hair. There is no "due" about a ticket-of-leave man.—Is there not, sir?

The LORD CHIEF JUSTICE: Oh yes.

Dr. KENEALY: I thought it was in the discretion of the Governor.

Mr. Justice LUSH: It goes by strict rule.

Mr. Justice MELLOR: A Convict if he behaves well receives notice that he will be due for a ticket-of-leave, and they give him a specific period in which, if nothing happens to the contrary, a man may be set at liberty on a ticket-of-leave, and then afterwards he is discharged absolutely.

Dr. KENEALY: Then do I understand you that this LUNDGREW'S conduct was so good that he was returned due?—Yes, with this exception, that he attained a special class, and therefore earned seven days, which a person who does not earn the class does not earn.

After he became due did he continue in the same department or was he removed to another one?—He is removed as the work is required to be done. He is not transferred merely because he is growing his hair and whiskers.

I did not imagine he was; but you say at the same time he becomes due, that is three months before he leaves, does he re-

main after that in the department he has been in, or is he transferred to be with others who may also be due?—No.

Then he continued in the same department down to the day he was discharged?—Yes.

And that you say was under your personal superintendence?—Yes.

Do you know whether his beard was clipped at all during that three months?—I am unable to answer that question.

Is there a barber in the Prison who does that?—No, there is not. Each man cuts his fellow-Prisoner's hair.

And his beard?—And his beard.

Are they allowed scissors and things of that kind?—Under the superintendence of an Officer.

Then does the Officer attend when they are clipping their beards?—Yes.

Can you tell me whether he is here?—I could not tell who that Officer is.

When were you first asked to look at LUIE?—Personally?

Yes, personally?—This morning.

When did you first hear that you were to be asked about it?—On Saturday morning.

Is that by letter?—No, by the Chief Warder of Chatham Prison.

Where did you see him this morning?—In some part of this building.

Did you see the photograph of LUIE before he was shown to you?—Yes.

Is that the photograph that has been sold at the shops?—I cannot say.

It was shown to you as a public photograph, I suppose?—I have seen a photograph of LUIE, but I do not know where it was bought or sold.

That is what I mean?—Yes, I should not have identified the man by that.

How do you mean, it is not like the man?—It was not so much like the man as the one that was taken at the Prison; simply because he had his hat thrown over the side, and I could see only part of his countenance, and could not see his bald head.

You mean the public one?—Yes, I told Mr. POLLARD yesterday——

The LORD CHIEF JUSTICE: Never mind that, unless Dr. KENEALY wishes it.

Dr. KENEALY: So you had a conversation yesterday with Mr. POLLARD, about it, had you?—No.

I thought you said you had?—No; I had no conversation with him. I made the remark when I saw the photograph, that I should not have been able to swear to LUIE, or rather JOHN LUNDGREN, by that one. Mr. POLLARD made no answer.

Oh no, of course not.

Mr. Justice LUSH: Did you say why?—Because his hat was drawn very nearly over the greater part of his countenance.

The LORD CHIEF JUSTICE: You said something about a bald head.—Yes; I could not see whether he had a bald head, or hair on his head.

Had the man in Prison a bald head?—Yes.

Dr. KENEALY: Where did you see Mr. POLLARD?—In the Governor's office at Chatham.

And you had no conversation either, with him?—No. No more than I made a remark.

And he said not a word?—No, he took down my evidence, what I had to say.

All the time he being perfectly silent?—He made no remark about the man, none whatever.

He made no remark about anything you told him?—No; not that I am aware of.

Come, come.—I beg your pardon. I have come here to speak the truth.

Do not suspect yourself too soon. What do you mean by, that you are aware of?—No; I do not remember his making any remark to me.

You must be aware whether Mr POLLARD yesterday made any remarks to you or not?—No, I am not.

You are not aware of it?—As far as truth and knowledge go.

If he did you have forgotten them?—If he did I have forgotten them, and I do not think I have.

Will you swear he did not?—I should not like to swear either one way or the other.

What name did you say the man passed by?—JOHN LUNDGREN; that is the name we knew him by between the two Officers; that is, I was holding the office of shoemaker Warder, and the other Officer had the situation of tailor Warder.

Was he the last Witness?—The second was the Officer of the tailors' party.

I suppose he is a relation of yours?—No, none whatever.

The LORD CHIEF JUSTICE: You are, I think you say, one of the Principal Warders?—Yes.

Have you been promoted since then?—I have been promoted since.

At that time you were foreman of the shoemaker Warders?—Yes, and I left him in the tailors' party.

Dr. KENEALY: Did Mr. POLLARD bring more than one photograph to you at Chatham?—Yes.

How many?—Two; the Prison photograph, and one with the hat drawn over his eyes.

Have not you seen any others?—I have only seen this taken in Prison.

You are very fond of putting the Prison on me. I am talking of LUIE. Have you seen any others of LUIE than those two which Mr. POLLARD showed you yesterday?—I have seen none but the same pictures.

Mr. Justice LUSH: Mr. POLLARD showed only one of LUIE.

Dr. KENEALY: And one of LUNDGREN?—I have seen a copy of each.

Mr. Justice LUSH: But I understood only one besides the present one?—Only one of the public ones—only those that are sold, if this is one of them.

Dr. KENEALY: How long was Mr. POLLARD with you?—Not many minutes. I could not tell the time, but I do not suppose longer than ten minutes.

Re-examined by Mr. Serjeant PARRY.

Did Mr. POLLARD yesterday take down your evidence?—Yes.

Asked you questions about your evidence and you answered them?—He asked me what I had to say about it, and I told him, and that finished the matter.

A JUROR: Are the Prisoners compelled to shave when they are admitted into the Prison?—No, their whiskers and hair are cut off by scissors.

Are they allowed to wear a moustache?—Only within three months date of discharge.

Dr. KENEALY: There is one question I forgot to ask, my lord. You say he told you the different parts of the world he had been in?—He told me he had sailed to all parts of the world.

Did he tell you he had been to the diggings?—No, he mentioned no part in particular.

That is not mentioning a part in particular. Did he tell you he had been to the diggings?—He did; he told me he had been to all parts of the world.

GEORGE BONYNGE, sworn.

Examined by Mr. HAWKINS.

Are you a Warder also at the Chatham Convict Prison?—Tailor's Warder.

For how long were you so between the year 1868 and 1873?—I went to Chatham Prison as tailor's Warder on the 26th of February, 1870.

As tailor's Warder?—As tailor's Warder, and took over the duties on the following day.

Do you remember a Convict of the name of LUNDGREW or LUNDGREN?—Yes, LUNDGREN.

How long was he under your charge?—From the 27th of February, 1870, until April 1872.

Was that under your constant superintendence during that time?—Constant superintendence and charge of a party.

Did you see him from that time, that is the date you have last given us, 1872, until he left the Convict Prison in the year 1873?—Very nearly every morning going to chapel. He went from my shop to the drivers.

Did you see him the day he went?—It is my duty. Every man located for discharge to go and dress them in their separate cells, which I did on the 24th of March, 1873.

You dressed him yourself?—Yes.

In what I think you call liberty clothes?—Liberty clothes.

Did he tell you what he was, or had any conversation with you about what occupation he followed?—He told me he was always a seafaring man; that he required a sailor's suit.

And you dressed him accordingly in a sailor's suit?—According to the rules of the Convict service.

The LORD CHIEF JUSTICE: You mean you did let him have, according to the rule, a sailor's dress, did you?—Yes, that is the rule; if a man is taken as a seaman he gets a sailor's suit at the leaving.

Mr. HAWKINS: Just look at that. (Photograph produced and handed.) Is that a photograph of the man you so dressed?—This photograph that is on this paper I have seen before in the tailor's shop. They are all pasted up under my superintendence.

The LORD CHIEF JUSTICE: Is that a photograph taken of him prior to leaving, or on his coming into the Jail?

Mr. HAWKINS: I am going to call the photographer, my lord.

The WITNESS: This one is taken prior to leaving.

The LORD CHIEF JUSTICE: Is that the one you say you have seen, or is that another?—This is the one I have seen; that is the same sort of photograph.

Mr. HAWKINS: Is that a photograph of the man whom you so dressed in his liberty clothes?—Yes.

Now, you have seen the Witness in this Case, LUIE?—I have.

The man who sits there (pointing to him)?—I knew him directly I went in, and could pick him out of a thousand.

Is that the man you dressed in liberty clothes in 1873?—That is the man.

Mr. Justice MELLOR: Is he the same man who was under your superintendence during the time you have spoken of?—The same man.

Cross-examined by Dr. KENEALY.

Is that the dress you dressed him in?—It is not.

Is the man here who made the dress for him?—They are not made at Chatham; they are made in London.

Is there any record of the dress made at Chatham before it is given to the ticket-of-leave man?—Yes, what sort of a suit a man gets going away.

The LORD CHIEF JUSTICE: There is an entry of that, is there?—Yes, whether it is cloth or cord, or whether he has got a cap or a hat. That is all the entry that is made.

In a book is it?—Yes.

Dr. KENEALY: When did you first see LUIE—here this morning?—This morning.

When did you first know that you were to be a Witness?—On Saturday night I was told that I would be required to attend at London on Monday.

When did you first talk to anybody about your evidence?—I talked to no one.

Did you never give your evidence to anybody?—Yesterday.

I suppose when giving your evidence you talked to him about your evidence?—I merely said I would know the man when I saw him, and the suit of clothes when I examined them.

Have you examined that suit of clothes?—I have.

Who is the person you gave your evidence to?—Well, I do not know the gentleman.

Do you see him in Court?—I think that is the gentleman (pointing to Mr. POLLARD.) This young gentleman (Mr. POLLARD, jun.) I most observed yesterday. That gentleman took it down.

Mr. HAWKINS: They are young Mr. POLLARD and I dare not say old Mr. POLLARD (laughter), but Mr. POLLARD, sen.

Dr. KENEALY: Did they show you any photographs?—Yes.

Photographs of LUIE?—Yes.

How many?—One I have seen.

Had you never seen that before?—No; not that one.

Had you ever seen one like it before in the shops?—No; I had no opportunity in Chatham.

They do not lock all of you up in prison?—No. I can go up to town when I like. But I have not seen it. I have not interested myself.

How long were you with them giving your evidence yesterday?—I should say about five minutes.

At that time you had not seen LUIE?—No.

But you told them, I suppose, you were sure he was the man?—Positive.

Although you had not seen him?—I said I could pick him out of a thousand.

The LORD CHIEF JUSTICE: I do not quite understand. Did you say it was the man you had known before you had seen him?—Yes.

From what did you speak?—From the photographs I had seen.

You were comparing the two photographs?—Comparing the two photographs.

Then he was under your immediate superintendence while he was in the tailor's department?—While he was in the tailor's shop.

What sort of language did he speak?—Foreign.

He spoke English, I suppose?—Well, he spoke English pretty tidy sometimes.

He spoke English, but with a foreign accent; is that what you mean?—Yes, that is what I mean—broken.

A JUROR: Did you ever notice anything the matter with his hands?—I never paid any attention to him. He was darning stockings, and kept at it all the time; only sometimes he used the palm-needle.

Another JUROR: What number of men was there in the tailor's shop?—When I took the shop over there were 28.

CHARLES SEYMOUR, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Warder at the Chatham Convict Prison?—I am.

Do you remember a person there of the name of LUNDGREN or LUNDGREW?—Yes. LUNDGREW, I believe.

Have you seen him since?—I have seen him since this morning. Is that the man (pointing to JEAN LUIE)?—That is the man to the best of my belief.

Did you at any time have charge of him?—I did. I had charge of the drivers' party.

In what year was that?—Last year.

In 1872, do you remember whether that was after he had left the tailor's shop?—It was.

And he joined the drivers' party?—To finish his term of sentence.

Did you know him down to the time he left?—Yes.

Are you a Clerk at all in the Steward's Office, or do you produce any book called the "Steward's Book"?—No. I am a Clerk in the Steward's Office, but Mr. POTTER produces the book. He discharges the Prisoners, and the books are outside.

Cross-examined by Dr. KENEALY.

Had you much to do with this LUNDGREN?—I had charge of the drivers' party at intervals during the time the other Officer was away.

Have you seen him at work?—Yes, he was employed carrying a grease-pot round, greasing the waggons.

And you have seen him doing that?—Yes.

Was anything the matter with his hands?—That I cannot say. I never noticed him so close as that.

You have seen him at work. He has been under your superintendence; you come here to swear to him, and yet you never noticed whether there was anything the matter with his hands?—I did not.

Where did you see him before he left; how late before?—I cannot say. I was employed inside the Prison, and had opportunities of seeing nearly all the Prisoners. I have a better opportunity than a great many men, being employed on the staff of the Prison.

But you have no recollection whatever how long before he left you saw him?—No, I cannot say; but I have in my mark-book the time that I marked him up his work.

What do you mean by marking up his work?—A man at work has so many marks a day allowed him. This is the book of the drivers.

The LORD CHIEF JUSTICE: What do you mean by so many marks a day allowed him?—For his work.

You mean he must complete a certain number of marks?—He is allowed for his work so many marks per day—six, seven, or eight marks per day. This is the mark-book, and I can tell you when I marked him off.

That is marks of having done so much work?—Yes; the drivers' party being all privileged men, they are all on eight marks per day: and the last time I marked him was on the 29th November, 1872, I see by this book.

Is that the last you have got? I should think you must have something later than that?—Well, I did not have him later than that. I only had the drivers' party at intervals, during the time the other Officer was away.

Because he did not leave that party?—Not until up to the time of his discharge; they always do.

Dr. KENEALY: When were you first asked about him?—On Saturday.

Who asked you first about him?—Chief Warder TURNER.

And did you give your evidence yesterday about him?—Yes. I was asked by a gentleman what I knew, whether I had seen him.

Was that the first time you gave your evidence about him?—It was.

That was Mr. POLLARD, I suppose?—I do not know. That is the gentleman. (Pointing to Mr. POLLARD.)

Did you see CLARKE at all?—Who?

Did you see CLARKE; they call him Inspector?—Oh, the Inspector I do not know; I have not seen him. I may have seen him. I do not know him.

But I mean, did you have no communication with Inspector CLARKE to-day?—I have seen some one there.

I mean a communication. Have you been talking to Inspector CLARKE to-day?—No, unless I may have been talking to him.

Have you or have you not?—I have spoken to him, if that is Inspector CLARKE. I do not know.

Come, come: have you any doubt about Inspector CLARKE?—I have never seen him before.

Did he introduce himself as Inspector CLARKE?—No.

Or CLARKE?—No.

What! an old policeman like you do not know?—I beg your pardon, I am not a policeman.

I thought you were. If you are ashamed of it I am sorry?—I am not ashamed of it.

You are an old Convict Officer?—Yes.

And you talked to a man to-day you did not know, and did the man take you to see LUIE?—Yes, he did.

You cannot tell us who that was?—Well, I suppose it was Inspector CLARKE: but I do not know for certain. I would not swear it was Inspector CLARKE.

Did CLARKE show you any photograph?—No.

Did he talk to you about any photographs?—No; we were called together—"You are wanted this way"—and we went into a room; it was full of people, and the first person I saw there was a man who, to the best of my belief, is LUNDGREN.

Do you mean any people there, except people on behalf of the Prosecution—were not they Witnesses?—That I cannot say. I have never been to the Court before to-day, and they were all strangers to me.

Re-examined by Mr. Serjeant PARRY.

You never saw Mr. CLARKE until this morning?—No.

GEORGE DOUGLAS, sworn.

Examined by Mr. HAWKINS.

I believe you are one of the Warders of the Convict Prison at Chatham?—Yes.

And are you also Clerk in the Governor's Office?—Yes.

Do you remember the Convict LUNDGREN?—I remember a Convict LUNDGREW.

How long do you remember him yourself?—Since about the latter end of 1868.

How often were you in the habit of seeing LUNDGREW?—On the average about two or three times a week, I should say, and one part of the time he was in my ward. I saw him then every day.

The LORD CHIEF JUSTICE: Which was your ward?—E 2, my lord.

Mr. HAWKINS: How long a period was he in your ward?—I am not certain about any definite period.

I do not mean to a day or a week, but about how long?—I should say a couple of months.

Then, with the exception of those two months when you saw

him every day you saw him two or three times every week from 1868 until his discharge?—Not every week I did not see him, on an average.

About how often?—He was above two years in the tailor's shop. I will not be certain what time, but during the time I have seen him on the average two or three times a week.

The last year before he left the Prison how often did you see him then?—I should say about two or three times a week.

Now, have you seen the Witness LUIE?—I have.

Is that the man who sits there? (pointing to JEAN LUIE)—Yes, there he is.

Is that the person who was the Convict, as you have mentioned, by the name of LUNDGREN?—Not a doubt of it in my mind.

Where did you see him first after his discharge?—In a room this morning, here in the Court.

How many persons were there in the room?—I should say there were about forty.

The LORD CHIEF JUSTICE: In the room this morning, you mean?—Yes, my lord.

Mr. HAWKINS: You say there is not a doubt in your mind about it?—Not the slightest.

Cross-examined by Dr. KENEALY.

Were they all Witnesses for the Prosecution, do you know, these forty people?—That saw him this morning?

Yes.—I am not aware of that, or all that were in the room, when I entered, were for the Prosecution.

Was not it the lawyers' private room?—It was marked "private" on the door. I am not aware what they were.

Were you shown any photograph of LUIE?—I was.

When?—Well, I was shown one yesterday.

Was that the first time?—No.

When were you first shown a photograph of LUIE?—I believe it was last Friday.

Who showed it to you?—Assistant-Warder WOOD, who had been up here to identify him.

Did you and he then have a conversation about the photograph?—He showed it to me when he entered, and as soon as I saw it I said, "That's him, no doubt."

At that time you had not seen him?—No.

But you judged from the photograph it was he?—Yes.

And yesterday you were again shown another photograph by Mr. POLLARD, I suppose?—I was.

The LORD CHIEF JUSTICE: When you say "again," was it a duplicate of that which you had seen before or a different one altogether?—I was shown two yesterday, my lord.

Two different ones?—Two different ones.

Two different public ones as distinguished from Prison ones?—Well, I believe one was a copy of the one taken in Prison, my lord.

Dr. KENEALY: One was LUNDGREN and the other LUIE, is that correct?—Yes, I believe the name LUIE was underneath one of them?

Then I suppose Mr. POLLARD said to you "The moment one looks at these, he can see they are the same?"—No, he did not.

Nothing to that effect?—No, he said "Here are two photographs. You can look at them." Those are the words.

Did he say they were like each other?—I said I could see a striking likeness.

No; did he say they were like each other?—No.

I suppose you said "There's a likeness?"—Yes, I did.

And I suppose you were prepared to recognise the original of one of the photographs when you saw him this morning, and had no doubt you would be able to recognise him by his beard and by his appearance?—Well, his beard was longer than when he left us.

When you saw him you recognised him from the photograph, did not you?—No.

Did not one photograph help you a little bit?—Not the slightest, as far as I know the man. I know him so well that it did not aid me, not that I know, not a bit.

Did you see CLARKE?—I did—who is CLARKE?

He is called the Inspector.—Yes, I saw him.

Did you see him before he went into the room?—Yes.

Did you have a little bit of a talk with him?—No, not upon LUNDGREN or LUIE.

Upon the weather, I suppose?—No.

Upon the Case?—I just asked him whether there was any chance of our getting home to-night, Sir. (Laughter.)

Now, do you mean that was all?—I do not remember any more.

Why, it was only this morning, and you are not prepared to swear you had not some conversation with him?—I daresay I did.

But you do not remember it?—I do not, Sir.

Now, did you have any conversation with him about LUIE?—No, I never mentioned the man's name.

Or about the Case?—No, I did not.

Mr. Justice LUSH: Did those photographs you saw of LUIE, one on Friday and the other yesterday, appear to you to be copies of each other?—Two of them did, and one was the prison one.

One of the other two was taken at the prison?—Yes.

Did they appear to you copies of each other?—No, they were not.

Had each a hat on?—Yes.

The LORD CHIEF JUSTICE: The two you saw had hats on?—Had hats on, two out of the three.

You say you remember the man in prison; do you remember anything about his head, whether he was a bald-headed man or not?—I did, my lord; he was bald.

Dr. KENEALY: Would your lordship kindly ask him whether he ever noticed anything about LUNDGREW'S hands?

The LORD CHIEF JUSTICE: Did you ever notice LUNDGREW'S hands, or see whether there was anything the matter with his fingers?—No, I did not.

JAMES LINES, sworn.

Examined by Mr. HAWKINS.

You are a Schoolmaster, I think, at Chatham Convict Prison?—I am.

And are you also the photographer to the establishment?—Yes.

Do you remember the Convict LUNDGREW?—I do.

For how long a period did you know him?—I cannot exactly say.

About how long?—I should think about eighteen months.

Do you remember his discharge on a ticket-of-leave in March, 1873?—I do not remember his discharge. I was not present when he was discharged.

At all events, did you preparatory to his discharge take a photograph of him?—I did.

Take that in your hand and tell me, is that a photograph (produced) taken by you?—It is.

Of the man we have been speaking of, LUNDGREW?—Of JOHN LUNDGREW.

You have the negative here, I believe, with you?—I have (producing it).

Mr. HAWKINS: I propose to put that in, now, my lord. The photograph itself will do better.

Have you another photograph of him?—I have several copies.

Just let me look at them. (They were handed). Have you seen the Witness LUIE?—I saw a person this morning who I was told was LUIE.

Did you recognise that person?—I did.

As whom?—As register 9,797, JOHN LUNDGREW.

The LORD CHIEF JUSTICE: As I understand, those were actually taken by yourself?—They were, from this negative.

Cross-examined by Dr. KENEALY.

Who told you that he was LUIE?—I do not know.

Was it Inspector CLARKE?—I do not know Inspector CLARKE.

Who took you into the room?—I followed eight or nine of the Warders who were going in. I followed those because I thought we were all wanted together. I did not hear an order given for us to go into the room.

And did the person, whoever he was, say when you all got in, "There's LUIE; look at him?"—Certainly not in my hearing.

What did he say?—He said, "Are you all satisfied, gentlemen?"

You have said that some one told you it was LUIE; did he point out LUIE, and say, "There's LUIE"?—Who?

The person that spoke.—No, he did not.

Did he single you out alone to tell you it was LUIE?—He did not tell me.

The LORD CHIEF JUSTICE: But did anyone say, "That is LUIE?"—Somebody said to me, "That is LUIE."

Dr. KENEALY: I want to know who that person was.—I cannot say.

Was he any person you knew?—A stranger to me altogether.

Was he any person at this (the Crown) table?—No.

Have you see Mr. STEPHENSON, one of the lawyers in this Case?—I may have done so. I do not know any lawyer of that name.

Then you cannot tell us who was the polite person who pointed him out and said, "That's LUIE?"—I cannot.

Did you ever see him before you took his photograph, LUNDGREW?—Yes, on several occasions.

Was he going to school to you?—No, he did not go to school, I believe.

Could you swear to the last time you saw him before you took the photograph?—No; not as to the day.

Could you swear as to the occasion within twelve months before you took his photograph, when you saw him?—To name the day, do you mean?

Occasion, I say?—I certainly saw him on more than one occasion before I photographed him.

But you have no recollection of it particularly; did you photograph any other people when you photographed LUNDGREW?—Yes.

How many more?—I cannot say.

Then, as I understand you, you do not profess to have any actual recollection of him beyond photographing?—No; I swear to him from the photograph.

You swear he is like the photograph, is that it?—I saw him on the day I photographed him; and was with him an hour and a half on that occasion.

Were you taking it so long as that?—I was taking several.

Then you were not engagod with him if you were taking others?—We were all in the same room.

Is that the only occasion in your life you were in the room with him?—No.

When before?—In the tailor's shop.

When?—About twelve months, I should think, before I photographed him.

Is that all you remember of him?—That is all.

When were you first spoken to about this?—About what?

I should think "about this" was about as unambiguous a thing as I could put; what I have been talking about is this.—I do not quite understand the question; if you will kindly repeat it.

When were you first spoken to about this matter?—Which matter?

Do not you understand that question?—I certainly do not. About the TICHBORNE Case do you mean?

No, what I have been talking to you about.—About my photographing LUNDGREW?

Yes.—On Wednesday evening last.

Who was that by?—By Warder DOUGLAS.

Did he show you a photograph then?—No.

When were you first shown the photograph of him?—The same evening, I believe, but I will not swear.

By whom?—By the Chief Warder.

Did he ask you to compare it with the Prison photograph?—He did; but I could not get at the Prison photograph.

Now look at that forefinger of the arm that is leaning upon that table (pointing to LUNDGREW'S photograph), and tell me what is that upon the forefinger.—A piece of rag tied round his forefinger, I believe.

Will you swear it was not a wart? Look again.—Yes, I will.

Why?—I distinctly remember putting this man's hands in such a position that these rags should show.

What was he wearing rags for?—That I do not know. A great many persons wear rags in winter with chapped hands. I know such cases. I take particular care that the hands should be visibly photographed by order of the Directors.

By the JURY: Did you observe his little fingers?—Not particularly.

JOHN LUNDGREN (FROM THE CHATHAM PHOTOGRAPH.)

Dr. KENEALY: Is it the custom in the Prison, in order to identify a man's hands afterwards, that they allow a man's fingers to be sometimes covered with rags?—The men's fingers are covered with rags sometimes when I photograph them.

Are you the man who takes descriptions of the prisoners and the marks upon them?—No.

Is that man here?—I cannot say from my own knowledge.

Did you see him this morning from among the people in the rooms?—I do not know who took the men's marks.

How long have you been in Chatham Convict Prison?—Three years last July.

Do you know the man whose duty it is to take the marks of Convicts?—I do not know anything about the Clerk's Office, and the routine of the work.

The LORD CHIEF JUSTICE: He might know the handwriting. Do you know this handwriting? (Handing the form to the Witness.)—I believe that is the handwriting of the Discipline Clerk, called JAMES CRANSTONE, my lord.

Mr. HAWKINS: I will tell your lordship exactly how the matter stands. We had not until this morning an opportunity of seeing the original book in which the writing of the Clerk was. He has been telegraphed for, and will be up from Chatham, one Clerk that was supposed to be able to prove it, but it was found not to be his handwriting.

The LORD CHIEF JUSTICE: However, you have telegraphed for the right one?

Mr. HAWKINS: Yes.

Mr. Justice LUSH: Do you see that man LUNDGREW now in Court?—To the best of my belief, that is the man (pointing to JEAN LUIE).

The LORD CHIEF JUSTICE: I think I understand you to say you have no clear recollection of the man, except through the photograph?—No, I should not like to swear.

You have a distinct recollection of having taken the photograph?—Oh, I have a very distinct recollection of that.

You have not a sufficient recollection of the man to swear to

him except by means of comparing him with the photograph?—I remember the man distinctly from the photograph.

Mr. Justice Lush: But do you mean by the interview you had with him, or from the picture?—From the interview.

You remember from his features?—I remember his features.

And are you sure that is the man?—I am sure in my own mind that is the same man that I photographed.

FREDERICK POTTER, sworn.

Examined by Mr. Hawkins.

Are you in the Steward's Office at the Chatham Convict Prison?—I am.

How long have you been so?—Three years last July.

Do you remember a man of the name of Lundgrew in prison?—Yes.

For how long a period do you remember him?—Only for a short period. It does not come under my jurisdiction very often.

Now, upon the occasion of the man's discharge, does he then come under your notice?—Yes; he comes then under my particular notice.

Do you remember Lundgrew being discharged in March of the present year?—Yes, on the 25th March of the present year he was discharged.

Is there any allowance according to the Prison Rules, or any sum of money given to a discharged prisoner?—He is allowed to earn a gratuity, and he is paid that gratuity on his discharge.

Is that all paid at once?—No, the first instalment is £2, and of that £2 he is only allowed to take in cash from the Prison, or from the Warder who takes him to the Station, five shillings as subsistence money.

Now, how much was due to Lundgrew at the time of his discharge?—I have the case here.

If you will just answer my question—if you could tell that.—He had £3 gratuity.

And was there also a sum of money due to him as his own?—£1 private cash.

So that he was entitled altogether to £4?—Yes.

Was it part of your duty to pay him the sum of money that is due on going out?—No: I make up an escort to the Warder in charge, who takes him to the Railway Station and gives the money into the Prisoner's hand; but I make up his accounts for him to sign.

Will you answer this question? Supposing a man is discharged, what is the course of procedure; that is to say, a man is outside the walls—does a man escort him anywhere, or what is done?—Yes, after he has signed his accounts, which is done the day previous, an Officer escorts him down to the Railway Station.

Because, I suppose, a Prisoner announces where he is going?—Yes, he has to give that information some time previous to his discharge.

The Lord Chief Justice: And you say the Convict signs the account you make out before he goes?—The day previous.

Mr. Hawkins: And on the morning of his discharge you say he is escorted by the Warder to the Railway Station?—Yes.

What is done then with reference to his ticket?—A Railway warrant is made out signed by the Governor, and the Warder in charge has to take the warrant to the Railway Station, get the ticket for it, and give the ticket to the Prisoner, and see him into the train for his destination.

Have you the counterfoil of the Governor's warrant?—Yes, there is the counterfoil of the Governor's warrant.

Can you tell me what was Lundgrew's destination?—Folkestone.

The ticket being taken, is it the duty of the Warder to hand over any portion of the money to the Convict before he takes his departure by the train?—Five shillings cash.

Is that all?—That is all.

How is the other handed to him?—The other portion of the £2 is made up as follows.

You transmit to him?—By post-office order.

The five shillings is given, as I understand you, to the Convict, as I understand you as subscription money?—Yes.

A ticket is taken out for him at the Railway Station, to the place he alleges he is going to?—Yes.

The Lord Chief Justice: That is gratuitous, I suppose? Is that paid for by the authorities, or taken out of the money coming to him?—The Railway warrant is paid for by the authorities.

So that he gets a free ticket to the place he says he is going to?—Yes.

And then a post-office order for the money is sent to that place?—Is sent to that place, minus any moneys he may have to pay for the postage of letters.

That is forwarded to his place of destination, as indicated by the Railway ticket?—Yes.

Mr. Justice Lush: How do you get what address to send it to?

Mr. Hawkins: He says the town is given to the Governor.

Mr. Justice Lush: Any particular place?—The way I addressed that letter was in this way: "John Lundgrew, Post Office, Folkestone;" and in the corner, "To be called for."

Then the enclosure is a post-office order for the amount?—A post-order office for the amount.

The Lord Chief Justice: On that post-office order?—On the post-office order at Folkestone.

A Juror: How soon after the discharge of the Prisoner is that?—Generally it is sent the day before, so that he may not be without money, and he can get it the same morning as he reaches the post-town.

The Lord Chief Justice: The motive, I suppose, is to prevent a man as soon as he gets out plunging into some course of dissipation?—That is the motive. At one time they used to have the whole of their gratuity nearly on discharge; but instead of going to their destination they used to expend it on the way, and never reached their destination. It was very often the case that they never reached their destination, and so that they should do so, there was only just sufficient money given them for subsistence, and the remainder of the first £2 was sent them by a post-office order, minus any postage.

Supposing a man is entitled to more than £2; you only send him £2 in the first instance?—That is all that we send him in the first instance.

And soon after that do you remit him the remainder?—In a month.

Mr. Hawkins: And do you remit that in the same way to the same place?—No.

How is that done?—We give him a form which he has to fill up, and at the same time we give him a receipt for the balance—an open receipt. He has to fill in this form and take it to the police. Then the police have a certificate to fill in at the bottom, and when that certificate is filled up, we send him the balance of his gratuity to the address mentioned in his application form.

So that the first instalment of his money awaits him at the time of his arrival at his place of destination?—Yes.

The post-office order for the first instalment, you say, was forwarded to Folkestone?—Sent to Folkestone.

And has never been returned?—No.

Was the second ever applied for?—It was never applied for; I hold the receipt here.

It was never applied for?—No.

With reference to the rule as to a man's beard being allowed to grow, do you know the rule?—No, that is not in my department.

You knew personally the Convict Lundgrew?—I knew him on the day of his discharge, because I had a little to do about it. The destination he gave to the Governor was Liège, Belgium. First of all, I think, he said he wanted to go via Folkestone and Boulogne; but on the day of his discharge, he said he thought he might go a nearer route than that, via Hull and Ostend. I think they are the two ports he mentioned. I went over to the Governor's Office to ascertain whether he could go over by that route; but found that all his papers had been forwarded to Folkestone, so that he must of necessity go to Folkestone.

The Lord Chief Justice: And accordingly it was made out for Folkestone?—The route was made out for Folkestone, and to that place he went, as the post-office order was drawn.

Mr. Hawkins: At all events, he left, and you saw no more of him?—No.

Have you seen the Witness Luie?—Yes, I have seen him.

Is that the same man as the Convict Lundgrew?—That is the same man to the best of my knowledge and belief.

Mr. Justice Lush: Where is he? Do you see him?—Yes (pointing to Jean Luie).

Cross-examined by Dr. Kenealy.

Where did you see him?—I saw him when he was locked in the separate cell for discharge.

The Lord Chief Justice: No, the gentleman means, when did you see Luie—not Lundgrew.—I saw him in one of the rooms here, but I do not know what room it was.

Dr. Kenealy: This morning?—This morning.

Did you go with the others?—I did.

Did you say you did or did not?—I did.

Did you hear anyone say "That is Luie?"—No.

Was Lines one of the men who went in with you?—Yes.

Did eight or nine of you go in together?—We did.

When you got into the room did no one say "That is Luie"?—Not that I am aware of. I did not hear any one say so.

When do you say you saw his photograph?

Mr. Justice Lush: He has not said so.

Dr. Kenealy: When did you see his photograph?—I saw it on Saturday last.

For the first time?—For the first time.

Who showed it to you?—It was shown to me in the Chief Warder's Office.

Mr. Justice Lush: Is that the prison photograph or another?—Another photograph.

Dr. Kenealy: Who showed it to you?—The Chief Warder.

What is his name?—Edward Turner.

Were you shown it then?—Yes.

After that did you have any conversation about it?—Yes, we did have a conversation about it.

Were you shown it again?—No.

Not yesterday?—Not that one.

Were you shown a different one yesterday?—I was shown a different one yesterday.

By Mr. Pollard?—I do not know who it was by. It was by two solicitors.

Those two gentlemen there, sitting opposite each other?—Yes.

Did they tell you it was a photograph of Luie?—Not to my knowledge.

It is only yesterday; surely you can remember what took place yesterday. Come! did they ask you, "Would you like to see a photograph of LUIE?" or say, "Here is a photograph of LUIE"?—Well, they may have done so.

About how long were they with you?—Only a few minutes.

And I suppose during all that time the conversation was about this matter?—Yes.

Did they write down any statement that you made?—Yes.

And put questions to you?—No; they simply asked me what evidence I could give upon the subject.

Did you produce any books to them?—Yes.

Did you bring the books with you, or had you to go for them?—The same books as I have in Court now.

But did you bring them with you yesterday or had you to go for them?—I brought them with me.

Did you guess or know all the matters you were going to be questioned about that you brought the books with you?—But I was not questioned.

What made you bring the books if you did not guess about it?—Because I was told previously.

Who told you?—Some of the Prison Officials. I do not know who.

You would be told what you would be wanted for, I suppose?—They asked me whether I had witnessed the signature of JOHN LUNDGREW; and I had done so. The whole of the entries are in my own handwriting; and I now recognize the man as having signed it because I had a little to do with him as it were on the day previous to his discharge.

Would you have any objection to let me look at those books?—None at all.

Show me the book that contains any writing of LUNDGREW?—Yes. (Book produced and handed.) That is the cash and property book.

Has the second order come back?—There was no second order sent.

It is not sent unless it is applied for?—Not unless it is applied for.

And never has been applied for, consequently the money has been retained?—The money is still in the hands of the Exchequer.

The LORD CHIEF JUSTICE: Here is the affidavit of JEAN LUIE and there is JOHN LUNDGREW, so that you get the "J" and the "L" in both. Look at them (handing papers to the Jury).

The WITNESS: There is another signature, your lordship—a voucher for the balance of the gratuity, £4 (handing it in).

Dr. KENEALY: The "n" is common.

The LORD CHIEF JUSTICE: Yes, in "JOHN" and "LUND."

Mr. Justice LUSH: Where do these come from?—They are made out at the Home Office, Whitehall, and sent to the Prison.

And given to the man when he goes out?—By the man to the Officer, the same as all property and everything else, by the Warder who takes him to the Station.

The LORD CHIEF JUSTICE: The "J" and "n" are common to both, and occur in the same places. Then the "L" is common to both. There is, besides, another "n" in "LUND."

Dr. KENEALY: I should like to see the paper one. (The voucher was handed to Dr. KENEALY.) Did you show the signatures to any person when you brought them up to town, or, yesterday, to Mr. POLLARD?—They were shown yesterday to Mr. POLLARD.

And were they shown to-day to anybody?—No; I have just unsealed it now. It bears the seal of the Steward's Office to which I belong.

ROBERT DAVIDSON, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Warder of the Chatham Convict Prison?—Yes.

Did you know a Convict of the name of LUNDGREW or LUNDGREN?—JOHN LUNDGREW.

How long did you know him?—Upwards of two years.

Did you have opportunities of seeing him during the whole of that time?—An opportunity of seeing him several times during the week.

Do you remember his being discharged upon the 25th of March last?—Yes.

Did you go with him upon his discharge to the Railway Station?—Yes.

And had you what is called a Railway warraut for his fare?—Yes.

To what Station did you go?—Stroud.

And what time did the train start?—Ten minutes past eight in the morning.

Did you take the ticket for him?—I gave the warrant and received the ticket.

You had what is called a Railway warrant?—Yes.

Did you give the Railway warrant to the Clerk at the Railway Station?—Yes.

And did you get a ticket for LUNDGREW?—From Stroud to Folkestone.

Did you see him into the train?—Yes.

Had you some money to give him?—Yes.

How much?—I gave him two half-crowns and a two-shilling piece.

The five shillings we have heard is what would be allowed him. What was the two shillings for?—Cab fare as I understood.

I suppose you walked there to save the cab, and then you gave him the two shillings?—Yes.

Did you have any conversation or not with him as he went along, as to what he was going to do?—On the platform.

What was it?—I asked the Prisoner where he was going to, and he told me some place in France. I cannot remember the name.

Would you know the name of the place if mentioned?—I cannot say.

Was it Liège?—No.

You have a book, have you not?—Yes.

Have you an entry of the number and name of the Prisoner?—Yes.

Have you seen the person who goes by the name of JEAN LUIE?—No; it is not JEAN LUIE.

Have you seen this man (indicating JEAN LUIE)?—Yes.

Where did you see him?—I saw him when I took him to Stroud Station.

Is that the man you knew as LUNDGREW?—That bald-headed man.

My question to you was, when did you see him recently—yesterday, or this morning?—This morning.

Are you quite sure he is the same man?—Yes, I could pick him out of a thousand.

Cross-examined by Dr. KENEALY.

Were you shown a photograph of LUIE?—I do not understand photographs. I understand it I see a man once or twice, and see him every day, I can pick him out at once.

That is not an answer to my question. Were you shown a photograph of LUIE?—Yes.

Then why could you not answer that? When were you shown it?—Yesterday.

By whom?—I do not know by whom. There were two gentlemen.

But you do not know them?—No, I do not know them by name.

Do you know them?—I would know them if I saw them again, I daresay.

Now see if you can see them.—This is one, sir, (touching Mr. POLLARD junior, who was standing near the Witness-box), and this gentleman's father.

But you cannot see him in Court?—A stout gentleman. I think that is the gentleman (pointing to Mr. POLLARD senior).

These are the two men you saw yesterday. How many photographs did they show you?—Two.

And one was the Prison photograph, and the other the public photograph?—Yes, I believe that was it.

Did they tell you that was LUIE?—I do not know such a man as LUIE.

Did they tell you that was the man passing off as LUIE?—LUNDGREW.

Did they tell you that was the man?—Not a man of the name of LUIE.

Did they tell you that was the man passing off as LUIE?—I cannot remember what they said. They showed me two portraits, that is all.

What time yesterday?—About one o'clock.

You cannot remember what they said. Now are we to have that distinct from you? Just consider what you are saying. Is that what you mean to abide by, that you have forgotten what they told you yesterday?—They asked me about the Prisoner LUNDGREW, and took my statement.

Do you remember it, or do you not?—I remember they took my statement.

I know that; did they tell you that was the man that was LUNDGREW?—No.

What did they say to you about the photographs?—They asked me if I knew the two photographs.

You said you did?—Yes.

And then they said, "That is LUNDGREW?"—Yes.

Now did you see the man at all until this morning?—No.

Was that in the private room?—No.

Where did you see him?—At the Governor's Office; those two gentlemen were in the Governor's Office.

This morning?—Not this morning.

I am talking of this morning. Was this morning the first time you saw the man?—This morning.

Was that in a private room?—I do not know what room.

Did you go in with the photographer and a file of people?—Yes.

Did anybody say, "That is LUIE?"—No.

Were you asked to point out LUIE?—No.

What did they ask you when you got into the room?—Some gentleman told us to come in, and showed us in there.

What did they ask you?—They did not ask me anything.

What were you shown in for?—When I went in I saw that LUIE there.

I know you did; and did the whole nine or ten of you shout out, "That is LUIE?"—You called him LUIE.

Were you asked one by one, or did you all shout out together?—I do not think we all called out together. I said, "That is LUNDGREW."

Whom did you say it to?—Some gentleman who was standing there.

One of the gentlemen connected with the Prosecution, I

suppose, or one of the Detectives, or what: Did you see Detective CLARKE?—I do not know. I saw several gentlemen there.

Did you see Detective CLARKE?—I do not know him.

Did you know who was the man who conducted the lot of you into the room?—A stout gentleman. I do not know him.

He was a stout gentleman, was he?—Yes.

You would know him again, I suppose: Did you not hear that was Detective CLARKE?—No. I do not know him.

Is your name DAVIDSON?—Yes.

And you have always gone by that name?—Yes.

Mr. Justice LUSH: Did you give him a license when you left him at the railway station; a ticket-of-leave?—No.

You did not?—No.

Did you see any given to him?—No.

Mr. HAWKINS: That I think he would get at the Governor's Office.

JOHN NICHOLS, sworn.

Examined by Mr. HAWKINS.

I believe you are a Police Constable in the City of Bristol force?—Yes.

Do you remember being present at Cardiff when JOHN LUNDGREW was sentenced to penal servitude?—Yes.

That was at the Quarter Sessions?—Yes.

Held at Cardiff?—Yes.

On the 17th of October, 1867?—Yes.

What was it for?—For receiving £20 on an empty box from the Italian Consul or one of the Consuls named PARRY. He said he had a ship down the Roads, and he wanted the money to pay off some of his men.

The LORD CHIEF JUSTICE: But the technical offence was receiving money under false pretences?—Yes.

Mr. HAWKINS: I put in the certificate of that conviction.

Master COCKBURN: "This is to certify, that at the general Quarter Sessions of Peace, holden by adjournment at the Town of Cardiff in and for the County of Glamorgan, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, before ROBERT OLIVER JONES, RICHARD BASSETT, Esquires, and others their associates, Her Majesty's Justices assigned to keep the peace in the said County, and also to hear and determine divers felonies, trespasses, and other offences done and committed in the said County, JOHN LUNDGREN, otherwise called CHARLES LUNDGREN, was indicted for fraud (he having been before convicted of felony), and being thereof convicted, was for such his offence sentenced to be in penal servitude for the term of seven years, which conviction is now in full force.

"Dated this Fifth day of December, in the year of our Lord one thousand eight hundred and seventy-three,

"THOS. DALTON,

"Clerk of the Peace for the County of Glamorgan."

Mr. HAWKINS: Would you be good enough now to look at the man LUIE who sits there?—Yes; that is the man.

Now were you in October, 1862, in the police force at Bristol?—Yes, and am now.

Did you in that month apprehend any person named CHARLES LUNDGREN?—Yes; that man (pointing to JEAN LUIE).

On what charge was that?—Of stealing a valuable letter containing £248 2s. 3d. from Captain HENELUIS, of the 'Ulk.'

Dr. KENEALY: Are we to enter into this matter now, my lord?

The LORD CHIEF JUSTICE: Why not?

Dr. KENEALY: I will tell your lordship. I can easily understand why the evidence just offered may not be regarded as one of collateral issue, though in my judgment it is because it goes to a certain extent to his identity with a man who has sworn he was not in this country at the time in question; but we are now going to 1862.

The LORD CHIEF JUSTICE: By way of satisfying the Jury of who he was, what he was, and that he was a seafaring man, he went into a detailed history of his previous ships and servings in various vessels; and amongst others he covered the period of 1862, and stated where he was all the way down from 1854, when he told us that he sailed in the 'Osprey,' and went into detailed account of all the ships he had served, covering the period so as to satisfy the Jury as to who and what he was. That is part of the evidence in the cause, and would account of him from 1854 down to the time he makes his appearance in this country; and 1862 is one of the years. I was looking through the evidence on Saturday evening for the purpose of seeing what it was.

Dr. KENEALY: I am perfectly indifferent how many issues go to the Jury in this matter; but I understand your lordship rules this, that no matter what testimony is produced against this Witness, we will not allow you to produce adverse testimony.

The LORD CHIEF JUSTICE: We have said nothing of the kind.

Dr. KENEALY: I understood your lordship to say that if any Witnesses were here, we might call them, but undoubtedly you would not give me time to call them.

The LORD CHIEF JUSTICE: Sufficient for the present purpose is it to see whether this is receivable; when it comes to be your turn to make your application to the Court, it shall be listened to as it deserves; but at present the only question is whether the evidence is admissible, and having looked to see what the man has said with regard to himself and the different ships he has served in 1862, being part of the period to which he has spoken, it seems to me that this evidence is receivable.

Dr. KENEALY: Very well, my lord, I object to its reception.

The LORD CHIEF JUSTICE: That we quite understand. (Laughter).

Mr. Justice LUSH: Stealing a letter from whom?—ERNEST AUGUSTUS HENELUIS, Captain of the 'Ulk.'

Mr. HAWKINS: Where did you arrest him?—On the quay at Bristol, near Mr. TRAPMAN'S; near his door or on his doorstep, close to TRAPMAN Brothers, ship-chandlers.

Was he tried upon that charge?—Yes.

Before the Recorder of Bristol, Serjeant KINGLAKE?—Yes.

Was he convicted?—He was found guilty on the first for stealing, and they did not go into the other, and senteneed him for three years.

The LORD CHIEF JUSTICE: Then there were two charges?—Two charges entered in the calendar.

Mr. HAWKINS: What was the second?

The LORD CHIEF JUSTICE: He was not convicted on it.

Mr. HAWKINS: What was the sentence on the first?—Three years' penal servitude.

Mr. Justice MELLOR: That was before the alteration.

Mr. HAWKINS: Yes.

Mr. Justice LUSH: That is the previous conviction referred to in the other certificate?

Mr. HAWKINS: Yes.

Did you attend at the Sessions at Cardiff to prove that previous conviction?—I did, and have got my subpœna with me.

Is that the same man (pointing to JEAN LUIE)?—It is.

You have got the certificate of the previous conviction in your pocket?—Yes (handing it).

I see this is a Convict by the name of CHARLES LUNDGREN?—Yes, that was the name he gave.

The LORD CHIEF JUSTICE: "City and County of Bristol, to wit. These are to certify that at the General Quarter Sessions of the Peace, holden at the Guildhall, in and for the City and County of Bristol, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-two, and thence adjourned from day to day until Friday, the twenty-fourth day of October, in the year aforesaid, CHARLES LUNDGREN, late of the parish of St. Augustine the Less, in the City and County of Bristol, labourer, was in due form of law convicted on a certain indictment against him, for that he the said CHARLES LUNDGREN on the twenty-seventh day of September in the year aforesaid, with force and arms, at the parish aforesaid, in the City and County aforesaid, One bill of exchange for the payment of £248 2s. 3d., secured and payable thereon to one CARL GRUNDFELT, the property of the said CARL GRUNDFELT; and one piece of paper of the value of one penny, of the goods and chattels of the said CARL GRUNDFELT, feloniously did steal, take, and carry away. And that the said CHARLES LUNDGREN, the said bill of exchange, property, goods and chattels aforesaid, feloniously did receive and have, he then well knowing the same to have been, before then, so feloniously stolen, taken, and carried away. And for that the said CHARLES LUNDGREN, on the day and year, at the place aforesaid, One bill of exchange for the payment of £248 2s. 3d., secured and payable thereon to one ERNEST AUGUSTUS HENELIUS, the property of the said ERNEST AUGUSTUS HENELIUS; and one piece of paper, of the value of one penny, of the goods and chattels of the said ERNEST AUGUSTUS HENELIUS, feloniously did steal, take, and carry away. And that the said CHARLES LUNDGREN the said bill of exchange, property, goods and chattels last aforesaid, feloniously did receive and have, he then well knowing the same to have been, before then, so feloniously stolen, taken, and carried away. Whereupon the said CHARLES LUNDGREN was, by the said twenty-fourth day of October, in the year aforesaid, ordered by the said Court to be kept in penal servitude for the term of three years. Given under my hand this sixth day of December, one thousand eight hundred and seventy-three.

(Signed) "THOMAS DANGER,

"Clerk of the Peace for the City and County of Bristol."

Cross-examined by Dr. KENEALY.

When do you say you last saw him?—This morning.

Did you understand that that was the meaning of my question?—Yes.

Well, I tell you it was not. I mean in Cardiff.—In October, 1867.

And had you ever seen him before then, except in October, 1862?—Yes, many times.

Did he live in Cardiff?—Not then; he was living near Bristol.

The LORD CHIEF JUSTICE: You are a member of the Bristol police?—Yes.

Dr. KENEALY: What was he doing in Bristol?—I cannot say. Knocking about ships, interpreter, &c., a kind of a runner. I do not know what you call it.

He was a kind of runner?—Yes, going and getting a ship with a foreign Captain, and speaking English or any language they could not, interpreting for them; such as that.

That is from October, 1862, to 1867?

The LORD CHIEF JUSTICE: No; he was convicted in October, 1862; from 1865.

DR. KENEALY: I ought to have said 1865.—From 1862 to 1867 I did not see him; after he was sent from Bristol, I did not see him until I went to Cardiff.

The LORD CHIEF JUSTICE: Then, when you are speaking of his being a runner and interpreter, and so forth, you are speaking of prior to 1862?—Yes, previous to that I knew his wife and family, and I saw her three times last Saturday.

Dr. KENEALY: Is his wife here?—She is in Bristol.

Why did you not bring her up to town?—I had no orders to do so.

His wife and children are in Bristol?—Wife and one child.

And you were talking to the wife last Saturday?—I was, three times.

A JUROR: How long did you know him before 1862?—About eighteen months; that is all the time I knew him.

Dr. KENEALY: And the occupation he followed, in the interval, as I understand, was of a kind of runner about the ships?—I lost sight of him; sometimes I might not see him once a fortnight; but I have seen and known him along with his wife's brothers. There are several of them keep public-houses, and he was there at times.

And the occupation he followed was a runner about ships, and interpreter?—Or clerk; I do not know whether he was called a runner or interpreter, or what—knocking about the quays along with ships, and different places.

Do you know where he lived?—Yes.

Where?—Different places—King-street, opposite the old theatre.

Do you know the old number?—No; I know the person's name they rented of.

What name?—Mrs. HYDE.

Is she living now?—I believe so.

I mean, when did you see her last?—Well, I have not seen her for some time.

But where is this man's wife living?—In the Horse Fair, by St. James's Church.

Can you give me her address?—Yes.

Give it to me.—No. 11, Horse Fair, at Mrs. WILLIS'S, an old clothes shop.

Mr. Justice LUSH: When did you say you saw Mrs. HYDE?—I have not seen Mrs. HYDE for some time. I saw her son on Saturday. I did not inquire whether she was dead or alive. I saw his wife. I know where he lived in King-street when I fetched the money—£250 in Bank of England notes, nine sovereigns, and the bill for TRAPMAN'S goods, £95 odd in his box under the bed, and the wife present.

The LORD CHIEF JUSTICE: That was the proceeds of the bill of exchange he was convicted upon?—Yes; the £200 odd was recovered from it.

Does she pass under the name of "LUNDGREW"?—No; she goes under the name of "Mrs. HAWKINS." (Loud laughter.) She is living with a man of the name of HAWKINS.

Mr. HAWKINS: Do you know what her maiden name was?—Sarah.

SARAH what?—COCKBURN. (Renewed laughter.)

The LORD CHIEF JUSTICE: We must consider ourselves highly distinguished. (Laughter.)

Dr. KENEALY: Have you been shown any of this man's photographs?—Not until after I recognized him here last Friday. I did not see one anywhere.

You were here last Friday, were you?—Yes.

Did you see Inspector CLARKE then?—I think I did.

Have you any doubt about it?—Not the least.

Why do you say you think, if you have not?—At that time I did not know him. I was never in London till Thursday night last.

Did you have a conversation with him about this matter?—Not that I know of.

Do not hold down your head in that way.—I came here by a letter from Scotland Yard to see the man.

Did you have any conversation with Inspector CLARKE about this matter or not?—I do not think I said any more than that I was a Bristol man come to see him.

Are you prepared to swear you had not a conversation?—I do not think I said anything to him.

Would you swear you did not?—I would not like to swear I did not.

Nor he to you?—I do not think he did.

Where did you meet him?—I do not know that I saw him till the morning. He come to where I was to see if I had arrived.

Did you write him word to say where your lodgings would be?—No, I went to Scotland Yard.

Did you leave your address there?—Yes.

And he came to see if you had come?—I was taken by another Officer where to go to stay at, as I did not know my way about.

You told me something about Inspector CLARKE coming to see if you had come?—To see if I had arrived.

Was that before you went to Scotland Yard?—No, after, I think; he was not there.

After you went there you left your address?—I was taken by one of the Officers to where I was to stay.

And then you said Detective CLARKE called to know if you had arrived; is that it?—Yes, called to see me.

Did he call to know if you had arrived?—He called to see me.

What made you say he called to see if you had arrived?—Well, he did not know; I do not know whether he did or not.

Did he tell you how he found out your address at Scotland Yard?—No.

He called to know if you had arrived; but you had arrived, and had been conducted there by a man from Scotland Yard?—Yes, I was taken up to there to stay.

Now, is it true he called to know if you had arrived?—Called to see me.

I am asking you whether he called to see if you had then arrived?—He called there to see me, and I saw him. I had no conversation.

Then may I take it that it is not true that he called to see whether you had arrived?—To see if I had arrived, or to see me there.

Arrived is your own word?—He did not know I was there, or I know him.

Is it true that he called to see whether you had arrived?—Yes, you can have it that way if you like. He did not know whether it was true I had arrived or not until he came to see.

What time did he come to see you?—Well, I did not arrive here until late. It was dark and I did not know my way about; and I am sure I could not tell you. I did not arrive until ten minutes past six, and did not get up there until seven. It may have been between seven and eight.

You can tell me when it was Detective CLARKE called to see you on Friday last?—Not to a quarter-of-an-hour.

I did not ask you to do that?—Between seven and eight.

How long did he stay with you?—I do not know—two minutes.

Will you swear it was not more?—Yes, I will.

Not more than two minutes?—Not more than two minutes until I saw him in the passage here.

You had no conversation with him then?—No more than asked if I was come up to see a man, and I said I was.

Did he bring a photograph with him?—No.

When did you see him again?—In this Court, somewhere, sometime next morning.

That was on the Saturday morning?—Friday morning. I came up on Thursday night.

Did you go with him to Holloway?—No.

Did you go with him anywhere?—No.

And had no conversation with him?—No.

Were you shown a photograph?—Not till after I had seen the man; and then I had one given to me.

When did you see the man?—In one of these rooms here.

Who took you to see him?—I cannot say which of these gentlemen. Here is one and there are two or three there. I was taken into the room where there were a great many gentlemen.

Did they tell you who you were going to see?—No.

Oh, come!—I knew by this letter I had who I was coming to see.

But they did not tell you who you were going to see?—No.

Did not they tell you that the man you were going to see was there?—No.

Did not you get a description of him?—No; I was only to come and see if I knew him.

And you did not get a description?—None whatever. I did not see any likeness.

Did you read a description of him in the newspapers?—Yes, I did, coming up in the train.

Then you knew pretty well the appearance of the man you were going to see?—I knew I could tell whether he was LUNDGREW or not.

But you knew pretty well the sort of man you were coming to see?—I could not see that in the newspaper—his description and likeness.

Did you go home the same night?—Yes.

When did you see Mrs. HAWKINS?—Saturday morning.

Did you show her a photograph?—Yes, I did.

And when did you see young HYDE?—Some time on Saturday, driving a hansom.

Did you show him a photograph?—No.

Why?—Because I did not want to.

You did not want him?—I did not want him, and I did not want to show it to him.

Did you and he have a bit of conversation about his mother's old lodger?—No.

And it was not about this Case you talked to him?—He drives a hansom, and I knew him, and I merely spoke to him.

The LORD CHIEF JUSTICE: He drives a hansom cab?—One of his own, and he spoke to me as he passed through Temple Street.

Dr. KENEALY: Are you at all connected with the Prison where LUNDGREW was confined, or are you merely a Policeman in a different locality?—A Policeman in St. Phillip's Division.

Did you ever see him after he was sent to Prison for the offence you say he committed in 1867?—Not after 1867, till last Friday morning.

The LORD CHIEF JUSTICE: I think I understand you to say you did not see him in the interval between his coming out of his first period of penal servitude to the time of his being tried at Cardiff?—I did not.

He did not come back to Bristol?—Not that I know of.

Did the wife and child remain in Bristol?—Yes.

During the time you lost sight of him?—Yes, and she told me on Saturday she never saw him but once since.

You must not tell us what she said, but you say she was living with someone else. At that time, or since then?—Since then.

Do you know how long she has been living in that way?—No, I do not; because she was reported to be dead, and I had some difficulty in finding her.

However, you did?—Yes.

A JUROR: What is the age of the child?—There are three children; one is a soldier, and two girls.

The LORD CHIEF JUSTICE: And one girl still at home with her mother?—She does not, on account of the mother with the father; she is big enough to earn her own livelihood by sewing. She is just close by.

But not living with her mother?—No; she comes there occasionally; but she does not sleep there.

Dr. KENEALY: Will your lordship ask him to look at that photograph (handing it). Does that bring into your recollection anybody you saw in 1862 or 1867?—Not so much as the one I have got here. I should not take that.

Look at that one. Does that bring into your recollection anyone you saw in 1862 or 1867, upon your oath?—I cannot say that.

Are you prepared to swear that is not the man who passed under the name of LUNDGREN?—I am not; likenesses so very much vary; you get five or six, and they are not always alike. It is not like the one I have here.

We know that very well.

Mr. Justice LUSH: What one?—One very much like him.

Where did you get it?—I had it given me on Friday, after I had seen him.

(Adjourned for half-an-hour.)

Mr. WILLIAM MYDDLETON GIBSON, sworn.

Examined by Mr. HAWKINS.

Are you a partner in the firm of WHITWELL, GIBSON & Co., of Bristol?—Yes.

What is your business?—Merchants and ship-brokers.

Were you in that firm in the year 1859?—Yes.

A partner at that time?—Yes.

Had you at that time, in 1859, a Clerk in your employ whose name was LUNDGREN?—Yes, a Water Clerk.

Was he at weekly wages with you?—Yes.

Did you personally pay his wages?—I did.

Can you give me the date as near as you can, in the year 1859, when you first had him in your service?—In July or August when he was first employed by us.

Did you learn from him where he came from?—I had some general information respecting him, because he was so well known to the different Scandinavian and Swedish Captains.

Are you able to answer my question as to whether or not from him you know where he came from, from what part of the country?—He came from Cardiff to Bristol.

Before being at Cardiff did you know where he came from?—I always understood that he was in Hull previously.

How long did he remain in your service?—Until April, 1861.

What became of him then?—He left our service on account of an action for libel.

I will not go into particulars; he left your service?—Yes, he left our service.

Did you afterwards see him about in Bristol?—I saw him after he had come out of Prison.

The LORD CHIEF JUSTICE: What date do you give for that?—It was in April, 1861. He was sent to Bristol Jail on account of civil action for libel.

You mean in a civil suit?—In a civil suit.

Dr. KENEALY: April in what year?—April, 1861.

Mr. HAWKINS: How long did he remain?—I am not certain as to the date.

You say you saw him after he came out?—Yes; I saw him after he came out.

Can you tell me about what period that was?

The LORD CHIEF JUSTICE: Do you know how long he was in Prison?—I think, speaking from memory, about two months; I cannot say positively.

Mr. HAWKINS: Did you see much of him after he came out?—No; he kept from us from that period.

Did you know what became of him?—Shortly after that time he was taken up, and was sent to Prison on another charge.

Do you know what that was?

Dr. KENEALY: This must be hearsay. We have quite enough without encumbering the Case.

The LORD CHIEF JUSTICE: Do you know this of your own knowledge, or from the common report?—Common report.

Dr. KENEALY: It is too bad these things should be asked, and that I should be always on the watch.

Mr. HAWKINS: Have you seen the man LUIE who sits there (pointing to him)?—I have.

Is that the person who was in your employ?—He is.

In 1859, and from thence to 1861?—I have not the least doubt of it.

You have your book containing the first entry in which you put the weekly wages?—I have.

Perhaps you can turn to that and give me the exact date? (The Witness referred to the book.)—The first payment was made on the 13th of August, 1859.

That is the first payment of weekly wages?—Yes.

Mr. Justice LUSH: Do you know what Christian name he went by?—I have no recollection of his Christian name. It appears in my ledger as LUNDGREN.

Mr. Justice MELLOR: What is the first payment?—The 13th of August, 1859.

The LORD CHIEF JUSTICE: That is for the week's wages?—Yes.

Cross-examined by Dr. KENEALY.

When was your attention first called to this?—My attention to the case of LUIE?

Yes.—My attention was first called to it in reading the 'Times' in a railway carriage, travelling from Scarborough to Bristol.

When was that?—On Tuesday last.

After that did you see a published photograph of LUIE?—I did.

When you saw that did you say there was no resemblance?—No.

Or words to that effect?—No.

There was no likeness?—No.

Where did you see it?—I saw it in Bristol.

In a shop window?—Yes.

Did you go and look at it, or buy it of your own suggestion?—I did.

You have no interest, I am sure, in this Case. Was not the first impression on your mind it was not the man you knew formerly?—On seeing the first photograph that I had put before me, I observed that I could not say distinctly that he was the man.

I thought so, and I quite knew that you would be fair enough to say it.—Yes.

It struck you then as not being a likeness of the man whom you knew in 1859?—I could see a resemblance, but could not say positively as to the likeness.

That there was not a likeness?—Yes.

The LORD CHIEF JUSTICE: He did not say that.

Dr. KENEALY: I am asking him.

The LORD CHIEF JUSTICE: You are repeating his answers in a way that is incorrect.

Mr. Justice LUSH: "I saw a resemblance"?—I could not say positively as to the man.

Dr. KENEALY: Was not the impression on your mind one of considerable doubt, at least?—No.

Well, doubt?—No, not of doubt.

What was the impression, because I really do not understand you?—I could not have sworn to the man from the photograph I had put into my hand.

Who put it into your hand?—I bought it at Bristol.

That is not put into your hand, it is the thing you got yourself?—Yes.

Were you able to say when you saw it, "That, beyond all doubt, is the man I knew as LUNDGREN?"—No.

There was a doubt upon your mind. I am sure you do not care a bit how this Case ends; answer me candidly, because I am putting the question to you believing you will answer me with perfect candour. Was not there a doubt on your mind?—There was not a doubt.

What was there?—From the photograph I felt morally persuaded it was not a good likeness of the man.

Was it a likenesss or was it not?—There is a resemblance, but it is not a likeness.

It is exactly what I was suggesting.

The LORD CHIEF JUSTICE: You were repeating what the Witness said. You are perfectly justified in putting the question over and over again, and getting the answer you desire to get, but the answer of the Witness was not what you stated, therefore I corrected you.

Dr. KENEALY: Now at the time you knew LUNDGREN I suppose he was not bald. Do not look at him. I am asking you to remember LUNDGREN. If you want to refresh your recollection of LUNDGREN by looking at him (pointing to JEAN LUIE), you may do injustice.—He had not much hair on his head at that time.

I am asking you a very distinct question, which I am sure you will answer me—was he bald or not?—I should say he was not bald.

Had he anything like such a flowing beard as you see now?—No.

Had he any beard at all, or merely an incipient one?—His rule was to wear a moustache and a small imperial.

No beard?—No beard.

Had he any whiskers—anything but a moustache?—Occasionally an imperial, a little hair on the lower lip.

Had he any whiskers?—No.

Would you look at that. (A photograph was handed to the Witness.) Does that at all bring to your recollection the man you knew between 1859 and 1861?—No, not at all.

Mr. HAWKINS: Allow me to see that.

Dr. KENEALY: No.

Mr. HAWKINS: I apprehend, my lord, I am entitled to see that.

The LORD CHIEF JUSTICE: Yes.

Dr. KENEALY: The Witness does not identify it.

The LORD CHIEF JUSTICE: There is no question that when once you show a document to the Witness, although it is not in, yet it is one on which questions can be asked.

Dr. KENEALY: If you lordship says it is too clear for argument I am content.

A JUROR: Can the Jury see it?

The LORD CHIEF JUSTICE: No; it is not in evidence. It may be made evidence before they have done with it, but when a Witness has been shown a thing by one Counsel the other Counsel is entitled to see it.

Dr. KENEALY: Did he come to you with any recommendation or not?—No.

I do not know if there were any foreign languages in use in your Office?—Yes.

What languages, may I ask you?—Principally Norwegian, Swedish, Scandinavian languages generally, Danish.

Your business was in that line?—Yes.

With the northern vessels?—With the northern languages.

Did this man speak those languages, or any of them?—He spoke Swedish.

Was the man you knew a married or a single man?—Married.

Did you ever see his wife?—I have seen her.

I mean at that time?—At that time.

Do you know whether he had any family?—I believe so.

Did he ever tell you?—He might have done so, but at this period of time I cannot recollect the number of his children.

You do not remember?—No.

Have you seen him writing?—Yes, I have seen him writing.

Did you notice his hands?—I could not say whether I should know his handwriting or not.

I am not talking of handwriting; his hands, I said?—I have not particularly noticed his hands.

I want to see the Chatham photograph. (It was handed to the learned Counsel.) Did you ever notice that both his little fingers were crooked?—I have some recollection of a contraction, but I should not be able to swear to anything of the kind. I have some recollection of a contraction.

Of both little fingers crooked? Just attend to my question. Are you prepared to say you ever knew, in the whole course of his writing or talking with you in your life, both little fingers crooked?—I cannot swear to that.

Can you tell me what was the colour of his hair?—No, my recollection will not carry me back so far.

Can you tell me what was the colour of his eyes?—No.

Could you give me any idea whether his complexion was sallow or otherwise?—I am not prepared to answer that question.

Am I to understand you as saying this, that you do not remember either the colour of his hair or the colour of his eyes, or his complexion, or whether anything was the matter with his two little fingers?—I cannot say positively.

Did you ever inquire of him what he had been doing previous to his coming to you?—I daresay I did so, but I have no recollection.

You have forgotten?—I have forgotten the circumstance.

What was this matter about the libel he was indicted for? Was it a libel written by him?—It was a libel written by him.

Was it published in a newspaper, or what was it? I really do not know. I am asking you for information?—Printed in the Bristol paper.

The libel was printed in the Bristol paper. Do you remember what it was about or what it referred to?—He intimated that he had received half-a-soverign from a gentleman in Bristol for his vote at one of the municipal elections.

Naming the gentleman?—Yes.

And did the gentleman prosecute him?—Yes.

He was convicted you say and sent for two months——

The LORD CHIEF JUSTICE: No. He brought an action and recovered damages.

The WITNESS: Recovered damages, and the man had no means, and he was sent to prison for the debt.

Dr. KENEALY: He was sent to prison for two months.

The LORD CHIEF JUSTICE: No. He remained in prison two months. As I understood it, there was a verdict against him for damages. On that there would be judgment. A Ca. Sa. would issue. He would be taken on that to satisfy the amount. I suppose at the end of two months, either by the Insolvency Act or by settling, he came out?—He was liberated.

Dr. KENEALY: Do you know how he got out?—I cannot tell you.

The LORD CHIEF JUSTICE: It was not a criminal proceeding.

Dr. KENEALY: I put the word "prosecuted" to him, and he says "Yes."

The LORD CHIEF JUSTICE: I understood him that it was a civil action.

The WITNESS: It was a civil action. I do not understand the technicalities of the Courts. I am not prepared to tell you.

Dr. KENEALY: Was it tried at the Assizes or the Recorder's Court?—I cannot tell whether it was tried at the Assize Court or Quarter Sessions.

Quarter Sessions could not try it.

The LORD CHIEF JUSTICE: There is a local Court at Bristol.

Dr. KENEALY: You cannot tell where it was tried?—No, I cannot.

I have already called your attention to various marks and things about this man. Is there anything at all by which you could identify him except by the general resemblance?—His voice.

Did you speak to him?—I did.

When?—On Friday morning.

What did you say to him on Friday morning?—I said, "LUNDGREN, I am sorry to see you in this plight again."

What did he say to you?—"I do not know you."

Did he say that, as far as you could see, without any excitement or agitation; with perfect composure?—He certainly looked pale when I spoke to him.

He was pale before you spoke to him?—Yes.

Direct your mind, if you please, to my question. Did he not answer you with perfect composure, "I do not know you"?—His lip quivered, and he looked pale.

I thought you said he looked pale before you spoke to him?

The LORD CHIEF JUSTICE: You said.

Dr. KENEALY: No, my lord, the Witness says.

The LORD CHIEF JUSTICE: What he said was this, "He looked pale when I spoke to him."

Dr. KENEALY: Did he look pale before you spoke to him? Have you looked at his complexion and seen it is a pallid one?—It has more colour to-day than it had on Friday.

Where was it you saw him?—In a passage in the building here.

Were there people about him?—Several people.

Was he in custody?—I presume he was in charge of the Warder.

Was he walking along the passage?—He was standing with several other persons.

Surrounding him?—Yes.

Were any other persons talking to him but you?—Not at the moment.

Had they been talking to him when you entered?—The door was opened, and I came suddenly on the man.

What door?—The door of one of the offices.

I thought you said it was in the passage?—So it was.

Do you mean this passage here?—I mean one of these passages.

What door was opened?—I do not understand. I do not know. I was in one of the offices of the Court.

You came out into the passage and found him surrounded by various people?—Yes.

Do you know whether they were Detectives, or what they were?—No; I do not know. I am a stranger to the parties here.

When were you first communicated with?—On Thursday evening.

Did you see CLARKE or WHICHER at all?—No.

Who did you see about this Case?—A Solicitor in Bristol came to me first.

But when you came to town who did you see?—I came straight away to the Solicitors for the Treasury.

Who did you see? are there any of them in Court?—Yes, I saw Mr. STEPHENSON and Mr. POLLARD, and I saw Mr. BOWKER.

Did you see CULLINGTON? I should not have thought it would be complete without CULLINGTON. Did you see him?—I do not know him.

Where did you see those three gentlemen?—In one of the offices of the building here.

May I ask you how long you were with them?—I think I got away from the Court here by about eleven o'clock on Friday morning.

That hardly conveys to me how long you were with those three gentlemen.—Certainly not more than an hour.

That was a very long time, I should have thought. I suppose all your talk with them was about this particular identification?—Not the whole of the time.

The greater part?—I was waiting for the affidavit to be prepared, so that I should know him.

They could not prepare your affidavit until they had talked to you about the identification.—The affidavit was taken, I should think, in five minutes.

Were they talking to you the greater part of the hour?—I daresay one or the other was speaking to me.

That was all, I imagine, they were doing.—Yes.

And I suppose you had no idea at all after the conversation with him that he was LUNDGREN?—After I saw the man I had no doubt.

Did not the conversation with him help you a little bit?—Not the slightest.

Had you seen him before you saw them?—No; I did not see LUNDGREN until I had seen them.

That makes all the difference. Your answer misled me. I thought, from what you just said, it was after the conversation you had with those three gentlemen you saw LUIE.—I saw him.

After the conversation: in fact, was it their room-door you opened when you went into the passage?—I believe so. It was the room in which I signed my affidavit.

You went straight from their room into the passage, then saw LUIE and put that question to him; is that so?—Yes, I did.

I suppose you were sure before you left their room he was the man?—I was.

Re-examined by Mr. HAWKINS.

Let me first of all ask you about the photograph that you said

bore the resemblance, and which you would not swear to being a likeness. Had that a hat on?—It had.

When you saw LUIE in the passage, did you at once recognise him by your own unaided memory?—Immediately.

Dr. KENEALY: I object to the question. I am sick of leading questions. This is one of the worst leading questions that ever was put.

The LORD CHIEF JUSTICE: I have heard so many on both sides that I do not think you ought to throw stones at one another.

Mr. HAWKINS: I do not throw many stones.

The LORD CHIEF JUSTICE: The last made the strongest impression.

Dr. KENEALY: I do not think I ever put one so bad as that.

The LORD CHIEF JUSTICE: I thought you had gone as far as it was possible for human ingenuity to go. (Laughter.)

Mr. HAWKINS: Did anybody assist you in forming your judgment?—Not the slightest.

You were asked about crooked fingers, and you said you had some recollection of something connected with little fingers?—I said I had some recollection of seeing little fingers.

The LORD CHIEF JUSTICE: A contraction?—A contraction, but I could not swear to it.

Examined by the COURT.

Mr. Justice LUSH: Did you make any reply to him when he said "I do not know you"?—I do not think I did.

You said a minute ago, in answer to Dr. KENEALY, you were pretty sure before you left the room he was the man. What made you sure before you had seen him?—There is a wrong impression there, because I was still in the room, and the man was near the door.

It conveys the impression you were sure before you saw him. Is that what you meant to say?—My impression was very strong relative to the man before I ever saw even this photograph.

When was it you felt sure?—Immediately on seeing the man.

The LORD CHIEF JUSTICE: You had no doubt after that?—Not the slightest.

The man who was in your office in your employment, you say, spoke Swedish. When he spoke English did he speak it with the accent of a foreigner?—He did.

When you spoke to LUIE and he answered you did you find the same accent?—The same accent and the same tone of voice.

Mr. HAWKINS: Would your lordship ask one question of the Witness, Mr. NICHOLLS; that is to say, whether NICHOLLS recollected LUIE, and in whose service he was?

The LORD CHIEF JUSTICE: Yes.

Mr. HAWKINS: I do not know if your lordship will allow the Witness to go. He is engaged in business and anxious to leave.

Dr. KENEALY: I am going to make an application to your lordships about allowing me to recall Witnesses to be cross-examined. I did not cross-examine any of the first Witnesses with reference to the alleged attempt in July of this year or some month of this year, and if I should want this gentleman afterwards upon further information I hope your lordship would not shut me out from having him, or compel me to have him at my own expense.

The LORD CHIEF JUSTICE: You have shown no reason.

Dr. KENEALY: What information can I have about Bristol?

The LORD CHIEF JUSTICE: If you make any future application, we will listen to it.

Dr. KENEALY: If I make any future application and your lordship listens to it, I may have to bring the gentleman up at my own expense.

The LORD CHIEF JUSTICE: At the same time, we cannot keep this gentleman here, sacrificing his business.

Dr. KENEALY: I do not ask you to keep him here. If subsequent information should reach me, as it possibly may, what I ask is, that I should not be compelled to call this gentleman at my own expense as my Witness.

The LORD CHIEF JUSTICE: We can only deal with that when the occasion arises. At present there is no reason to suppose he would be wanted again. It is inconvenient and disadvantageous to that gentleman to be detained here, and I see no reason why he should be.

Dr. KENEALY: I do not want to detain him.

The LORD CHIEF JUSTICE: He may go.

Dr. KENEALY: Your lordship may remember I did not apply for a Witness to be kept, and you said if I applied, you would have made some suggestion. I wish to guard myself against its being said on some future occasion that "you did not intimate you wanted the Witness again."

Mr. JOHN NICHOLS, recalled.

Examined by the LORD CHIEF JUSTICE.

You remember the man LUNDGREN in Bristol among the ships, going about with the Northern captains?—Some one, some another. I could not say what was going on.

Do you know whose employment he was in?—I could not say whether he was interpreting or constantly employed by any person.

You cannot tell?—I cannot say.

You only know he was employed, but by whom you do not know?—About the quays, with the ships and ships' mates and captains.

Mr. ERNEST BRAMMER, sworn.

Examined by Mr. Serjeant PARRY.

Do you now reside at Leytonstone, in Essex?—I do.

Were you formerly in business at Gloucester as a merchant and ship-broker?—Ship-broker.

Were you carrying on that business from 1853 to 1862?—Yes.

While you were carrying on business at Gloucester had you dealings or had you business with Messrs. WHITWELL and Co.?—I had.

The LORD CHIEF JUSTICE: That was the firm the last gentleman, Mr. GIBSON, belonged to.

Mr. Serjeant PARRY: Was the last gentleman, Mr. GIBSON, in the firm then?—In one branch of the firm.

Did you know a Clerk in their employment of the name of LUNDGREN or LUNDGREW?—I did.

What name did you know him by?—LUNDGREN.

During what time did you know him about?—1858-59, I am certain of, but I have no doubt I knew him before then.

Did you know him after that or only those two years?—After that.

Down to the time you ceased to do business at Gloucester, 1861-1862, I mean?—Not after I ceased doing business at Gloucester.

Not after, but down to the time?—Down to the time.

From 1858-59 down to 1862?—1861, 1862. I will not be positive.

Did you frequently see him?—I did.

Do you know what countryman he was?—A Swede.

Did you have actual business transactions with him? Did you speak to him and converse with him at times?—Well, I did. He was a sort of Water Clerk for both broker and ship chandlers. In consequence of that he was in company with the Swedish and Russian and Finn Captains, and as I had business with those Captains I saw him and came in frequent contact with him.

Have you seen this man here before now (pointing to JEAN LUIE)? When did you see him recently?—On Friday.

Where?—Here in a private room.

Is he the man you knew as LUNDGREW, the Clerk to WHITWELL and Company?—Undoubtedly.

Did you hear him speak at all on Friday?—He answered me. I spoke Swedish to him.

What did you say to him?—I said, "Halloa, LUNDGREW, you are here." He answered in English, "I do not know you, sir."

Did you say anything to that?—No, I did not.

Mr. Justice LUSH: He answered you in English?—He did.

Mr. Serjeant PARRY: Used you to speak, when you knew him at Bristol, Swedish or English, or occasionally one or the other?—Mostly Swedish—Danish.

On Friday morning could you tell by the tone of his voice?—Instantly.

The LORD CHIEF JUSTICE: You knew his name again?—Immediately.

Mr. Serjeant PARRY: Have you any doubt he is the man you knew as LUNDGREN?—Not the remotest.

Cross-examined by Dr. KENEALY.

This is a long time ago.—It is a long time ago.

Do I understand you as saying you had any remembrance at all of ever having spoken to him in Gloucester?—Not in Gloucester.

Anywhere else?—Bristol or Cardiff.

Have you a distinct recollection of it? You did not answer my friend.—I am very sorry for it.

Are you able to swear you ever spoke to him?—Certainly.

Where?—Bath, Bristol, and Cardiff.

When?—During those years, 1858-59-60, but I have a vague remembrance that I saw him there in 1854 and 1855.

I did not ask you about your vague remembrance. Do not give me anything vague. I am asking you about speaking to him.—Speaking to him in those years he was with MARK WHITWELL, and later on in Cardiff.

Could you venture to tell me any distinct occasion on which you would venture to say you did?—No.

May I take it you merely have it on the idea that being in business relations with Messrs. WHITWELL you must have spoken to the Water Clerk?—Not at all.

The LORD CHIEF JUSTICE: No.

Dr. KENEALY: I was asking.

The LORD CHIEF JUSTICE: You were saying——

Dr. KENEALY: "May I take it"—that is not assuming anything.

The LORD CHIEF JUSTICE: I thought you said "I take it." I did not hear the "may."

Mr. Justice LUSH: It is contrary to what he stated.

Dr. KENEALY: First of all you say you have no distinct recollection of having spoken to him on any subject. Is that so?—Not quite.

What is quite?—He was consequently in company with the Swedish and Russian Captains, and when I had to do business with them on many occasions he was there, and therefore——

So I understood you before. He was there?—Yes.

You were going on to say something "and therefore." Complete the sentence?—He went about and acted as a sort of interpreter, not in my presence, but with others.

Now I am asking you of your own knowledge these things.

You say you saw him with those various persons; are you prepared to swear you ever used him as an interpreter in your life?—Not myself.

Are you prepared to swear to any occasion when you ever spoke to him in your life?—Most certainly. Both in Cardiff and Bristol. Cardiff is a large town, and Bristol is a larger city.

Where?—In company with the Captains, either at the Ship-broker's Offices, or the quay-side, or on board either of the ships. It is impossible for me to tell you in what house or on board what ships.

Have you a distinct, positive, absolute recollection of having conversed with him?—Most positive, most distinct.

You cannot tell us where?—No.

Nor about what?—Nor about what.

Nor who was present?—There were so many Captains.

You are talking of distinct and positive recollection. Did you understand my words?—I do. I have heard him speak so many times, if I had not seen his face I should have known his voice.

Could you give me one single instance of where and when and with whom you are prepared to say you ever heard him talk. I ask one, just to test you?—I should be very sorry to swear to any particular name, it is so many years ago. I do not remember any particular Captain that was there at the time.

You cannot give me a single instance?—I do not know that I can.

Do you not know that you cannot?—I am on my oath. I certainly will not commit myself to any particular name.

Could you tell me the subject of any conversation you ever had with him in your life?—I could not.

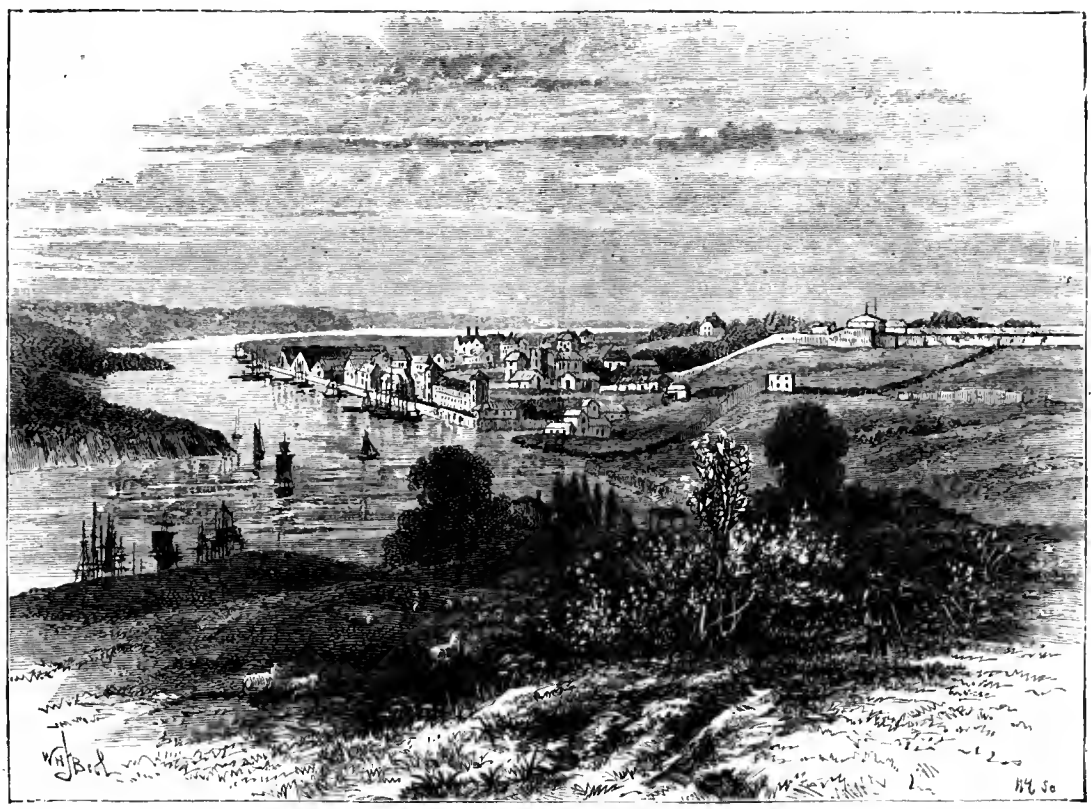
I am giving you a wider chance?—I must decline it.

Is what you are telling here anything but an impression you have spoken to him, upon your oath? I would not address you in that way, only you put your vague remembrance to me?—I do not follow you.

Is what you have been telling us here anything but an impression you have spoken to him?—It is anything but that: because I am as confident as if I had seen my own father, whom I have not seen for a great number of years. I am certain he is LUNDGREN: if my own father came I should recognise him by the tone of voice.

That is not even like an answer to my question. I am really sorry you will not attend to me. I am calling your attention to specific conversations you fancy you had with that man. I have endeavoured to test you every way I can about them. I fail to get an answer.—I told you distinctly.

I now put this question to you. Bearing in mind that you do not recollect a single place, or time, or subject of any conversation, have you anything but an impression on your mind that you have conversed with him?—It is more than an impression. I am certain that, not alone I have spoken once, but a great number of times, and heard him speak dozens of times.



CHATHAM.

Is it certain you have an impression? Is that all?—There is no impression about it. I am convinced in my own mind. You may call it impression—it is a very strong impression.

Will you tell me what convinces you? I give you every chance. What convinces you?—I hardly know how to answer that question.

You cannot tell me what convinces you that you have spoken to him?—Except I have got a very retentive memory, and as to features, and as to that particular man, and well acquainted with him those years of business.

I am talking now about conversations, but I cannot get you to the point; you are gliding into something else. I want to know what convinces you that you ever in your life had a conversation with LUNDGREN?—I remember distinctly.

If you remember distinctly, tell me the time when and the place where, and the persons present, and the conversation what about?—The conversation what it was about, the persons who were present, it is impossible for me to say. It was in Bristol and Cardiff, in the years 1858, 1859, and, no doubt, 1860 and 1861.

You will swear to those?—1858 and 1859, I will.

You will swear to conversations in 1860 and 1861?—No, I will not.

What do you mean by "no doubt"?—In 1858 and 1859, with certainty.

Who first spoke to you about this Case?—Nobody. 'The Times,' and 'Daily News,' and those papers. (Laughter.)

'The Times' and 'Daily News,' spoke to you about them? (Sarcastically). You certainly consulted the best and most impartial authorities?—I do not know I did.

When did 'The Times' and 'Daily News' speak to you about this Case?—I followed the Case from the beginning, I was going to say, to the end.

I am talking of the case of LUIE?—Of LUIE. I tried my best to come and see him when he first appeared on the scene, as I am a Dane myself. He stated he belonged to the island called Bornholm; and I was satisfied I should know whether he was a native of that island on account of a peculiar dialect; but I could not see him.

Is there an Island of Bornholm, or is it imagination?—I have no doubt you know perfectly well, Dr. KENEALY, where Bornholm is, as well as I do myself. (Laughter).

It is a great many weeks since you first saw that in your paper?—It is so.

The LORD CHIEF JUSTICE: It is a Danish island?—It is.

Dr. KENEALY: You were not able to gratify your curiosity by seeing him?—I was not.

When did those papers again tell you anything about him?—I saw his portrait in the Poultry last Thursday morning.

You saw it in the shop window, I suppose?—I went inside and had a look at it there.

Had anybody been talking to you about LUIE?—It was an every day talk; but not whether he was LUNDGREN, or who he was.

You saw this portrait last Thursday?—Yes.

Did you at once recognise it as that of the man you had seen eleven years ago?—I recognised it at once, and came up straight to see him.

Was he bald then?—I never saw him with his hat off.

The Lord Chief Justice: You came straight here in consequence of seeing that photo?—I did. I wanted to see him, but he was not here.

Dr. Kenealy: As you remember him so well, can you tell me what was the colour of his eyes?—No, really, I cannot.

Could you tell me what was the colour of his hair when you knew him?—Yes; a sort of lightish hair, it appeared to me. He had very little hair, whether cut close or thinned off——

I do not ask you about the quantity. I beg of you to attend to the question. I ask you what was the colour of his hair?—A light brown.

Are you sure about that?—Like that gentleman's there (pointing to a gentleman in the reporters' box). It was an indistinct colour.

You could not say whether it was black, or what it was?—It certainly was not black. It was indistinct.

I am very far away from the mark when you tell me it is indistinct; I want it distinct?—Call it a light brown.

The same colour as that gentleman's hair at the back there?—Yes.

A light brown; that is the nearest colour you see in Court?—I see so many wigs here. (Laughter.)

That is the nearest colour you see in Court here?—Yes.

What I call a delicate light brown; something in that way?—Yes.

Did you know his wife?—I have seen her.

Used she to go about with him with those Scandinavian Captains?—I should say not; I never saw her.

How on earth did you see her?—She was a sister of the landlord of the name of Cockburn where most of the Captains and shipowners went. That was where I saw her.

Did Cockburn keep an open house for these Captains?—I do not know what you mean by an open house.

Was it a public-house?—Yes.

The Lord Chief Justice: She was his sister?—Yes.

Dr. Kenealy: Was Lundgren living at that house?—Not at that time.

Did you know her before she married Lundgren?—Yes.

You did not know her after?—To the best of my knowledge, I have not seen her afterwards.

I suppose you have seen the lawyers in the Case. Have you seen this brilliant row of lawyers? (referring to the Treasury Solicitors)—I do not know whether they are lawyers.

You have seen all of them?—I have seen two or three. I do not know whether they are lawyers or not.

Assuming they are, you have seen all of them about the Case?—I have given my evidence.

Did you give them your evidence in their private room?—I do not know whether it is a private room—yes; I suppose it was a private room in the hall.

When was that?—On Friday.

Did you bring your photograph with you, or did they show you any photograph?—They showed me the man on Friday.

I want to keep you, if I can, to one thing. I am talking now of Thursday?—They showed me the same photograph that I had seen in the Poultry.

You gave them your evidence on Thursday?—As far as I could.

Told them you were sure he was the man?—That I should prefer to see the man first.

You told them you were sure he was the man?—According to the photograph I was sure in my own mind; I would not swear to him until I had seen him.

Did you make any affidavit on Thursday?—No; I did not.

Did you sign any paper?—No.

How long were you conversing with those four gentlemen?—On Thursday?

Yes.—About half-an-hour.

An hour or two, or what?—A half-hour.

You left then, I suppose, with a full impression on your mind he was an old acquaintance—Lundgren?—He is not exactly an acquaintance of mine. (Laughter.)

I did not mean it at all offensively to you. You left them with the impression on your mind he was the man?—That he was Lundgren.

You were sure after you left then?—Yes.

Who brought you to see him on the Friday?—I promised to return.

Where did you see him on the Friday?—In the same room.

Was he in custody?—I was called in, and there were about twenty people in the room.

Those warders?—No, I do not know there were any warders. There may have been; I did not see them.

Surely they did not have twenty lawyers there?—No, I should say not. There were a good many people from Cardiff and other places.

Twenty people, including a good many from Cardiff?—I think so.

When you went in, did anybody point him out to you?—Certainly not. I found him out myself.

Having thoroughly well mastered his photograph, I suppose?—I do not think myself that you will see a very great resemblance in the portrait. I think the portrait flatters him a great deal.

Which portrait do you mean?—The one with the hat on, where he smiles.

Did they show you this? (handing the Chatham photograph to the Witness)—No; it is the one with the hat on.

Now look at that; is that anything at all like the man you remember in 1859?—Yes, that is better than the other.

That is more like?—Yes.

This is as he was in 1859?—Oh dear, no: but the features are there.

Point out one single feature in that?—His nose. (Laughter.)

Is that the only one you recognise?—Yes, there.

His nose is the only feature you recognise there, in that, of the man of 1859?—Yes.

Re-examined by Mr. Serjeant Parry.

Just look at it again, and say whether there is any other portion of it you recognise it by?—There is no mistaking the man if you put your hand just below his nose.

The Lord Chief Justice: If you cover that there is no mistaking him?—No mistaking him. He looks haggard, and is much altered.

Let me see it? (It was handed to the Court.) What part is it, as you say, you do not find like; the lower part of his face?—He had no beard, only very trifling whiskers.

At the time you are speaking of?—At the time I am speaking of.

At the time you are speaking of he wore no beard?—Certainly not.

You say when you cover that part of the beard in this photograph there is no mistaking the other part?—No mistake.

Mr. LOUIS BIELSKI, sworn.

Examined by Mr. Hawkins.

Are you in the employ of Messrs. Cory & Co., of Cardiff?—Yes.

Merchants there?—Merchants and shipbrokers.

How long have you been with them?—I think between seventeen and eighteen years.

Do you remember a person named Lundgren in their employ?—I do.

In what year do you remember him in their employ?—I think it was between 1856 and 1857.

Was there a gentleman named Sparke in the same employ?—There was.

At that time?—At the time, 1856-57.

Do you remember being present at the Trial of that same person?—When?

At Cardiff.

Mr. Justice Lush: What person?

Mr. Hawkins: Lundgren. That was, I think, in the year 1867?—Yes, I think it was.

Did he speak to you, or you to him?—When?

During or at the Trial, or at the time of the Trial?—If I remember rightly, I do not think he had anyone to plead his Case, and he made, I think, a remark to me, "Will you swear I am Lundgren?" I said, "If you were in a room with a few thousands and I shut my eyes, and you opened your mouth and spoke, I will swear you are Lundgren."

The Lord Chief Justice: You said that to him?—I think that was what I said to him.

Were you called as a Witness?—I was.

He asked you if you would swear he was Lundgren?—Yes.

Repeat your answer, if you please.—If he had been in a room where there were a great many, some few thousands, and I shut my eyes and he opened his mouth and spoke, by the sound of his voice I would swear he was Lundgren.

Mr. Hawkins: You say he asked whether you would swear he was Lundgren?—Yes.

Had he given any other name?—I think he gave the name to Mr. Parry, where he obtained the money, of Captain Safstrom. There was a dot over the a.

Now was your attention called a few days ago to a photograph of the Witness Luie?—May I relate how it originated, anything about this man?

The Lord Chief Justice: We will see as you go on?—Firstly, it was by coincidence. One of the partners sitting in his office when the evidence of Luie was first given, he sung out to me——

Any action on your part to which that conversation led would be admissible; what the gentleman said to you which induced you to do something would not?—He did not induce me to do; he only said——

We cannot have what he said. Did you do anything?—I saw the likeness.

Did you go to see anything, or did he show you anything?—The likeness came to our office—from our London office to our Cardiff office, and they showed me a likeness, a photograph. I think it was on Thursday.

Mr. Hawkins: Cory Brothers & Co. have a London office?—They have.

In Crosby Square, Bishopsgate?—6, Crosby Square.

You say a photograph came from the London office down to your office in Cardiff?—It did.

Was that a photograph of the Witness LUIE?—It was the same person I saw this morning.

The LORD CHIEF JUSTICE: Had it the name of LUIE at the bottom of it?—I would not like to swear it was the name.

This one shows it here.

Mr. HAWKINS: Was it a photograph of a man with a hat on?—Yes.

Now when you saw the photograph with the hat on, was there anything occurred to your mind or your memory: did you remember in what condition the head of the man was?—The photo would show him better if he had his hat off.

Why?—Having a partly bald head.

That was your observation, as I unders'and, when you had merely seen the photograph with the hat on?—At Cardiff.

Did you after that, in the course of last week, for the purpose come?—I came on Saturday night, by the mail train.

When did you first see LUIE?—This morning.

Who is LUIE?—The man I recognised as CARL LUNDGREN, as being Clerk in the same office with me.

As I understand you, you said you were present when he was convicted at Cardiff?—I was.

Cross-examined by Dr. KENEALY.

Were you a Witness against him?—I was.

You say he said, "Will you swear I am LUNDGREN?" How did he come to put that question to you?—It is more than I could tell you. I know he had no one to plead his cause, and I suppose he tried to do the best he could. He tried to make himself out to be the Captain he represented himself. That is what I suppose.

I thought you said you were in the same office with him?—I was.

You were in the same office with him at the time you were swearing against him?—No.

What then?—1867; and this was 1857.

In 1857 you were in the same office with him?—Yes.

In 1867 you were swearing against him?—Quite right.

The LORD CHIEF JUSTICE: As I understand, what the Witness said was this. He was charged by the person from whom he obtained the money, and he appeared with a different name, and he was indicted as having done this. Being LUNDGREN, he had assumed a name which was not his own for the purpose of obtaining this sum of money. Then, this Witness being called having said he was LUNDGREN, he says, "Will you swear I am LUNDGREN?" and then he says, "If you were to open your mouth and speak, I would swear to you if my eyes were shut and there were a few thousands there." That is the way it comes out.

Dr. KENEALY: Now when did the photograph come to your office?—I think it was last Thursday or Friday, one of the two days.

Did you come to town on Saturday night?—Saturday from Cardiff by the mail train.

Who did you see about this business when you came to town?—Not anybody.

Never saw anyone?—I did not see anybody at all until this morning I came to Mr. STEPHENSON'S office.

You saw Mr. STEPHENSON this morning. Who else did you see besides Mr. STEPHENSON about this Case?—Nobody.

Nobody?—No.

Was it in the office here?—Here.

Nobody was present?—A great many gentlemen were present from Cardiff who came up with me.

Were all these gentlemen, this regiment, present (indicating the Treasury Solicitors)?—Which regiment? (Laughter.)

Four in a row.—I think they were.

They all began to talk to you about this matter?—They did not.

How was that?—I cannot tell you.

Only Mr. STEPHENSON, is that what you say?—Mr. STEPHENSON; I saw him.

Did you keep all the conversation to yourself, without these gentlemen joining in it at all?—I did not make any observation. They asked me what my name was, and I told them.

They only asked you what your name was; was that all that passed?—Perhaps there may be a couple more words passed.

You did not tell them what you could prove?—No, I did not.

You never told anybody until you came into that box what you could prove?—I will not swear to that; but not in London.

You did not tell a human being in London what you could prove until you came into that box?—No, that would not be true. The passengers who were with me in the carriage as fellow-passengers from Cardiff, I spoke to them about the Case.

What you were coming up for?—I did.

You were a very important man?—I do not know much about that, if I am a very important man.

What I want to know is, when you got to London and found yourself in the presence of these four gentlemen, do I understand from you, the only thing you told them, or they asked you, was your name and address; that is all?—Quite right, that is all.

Then until you got into that box you never told any human being what you could prove?—I did not say so.

I mean in London?—In London, that is quite right.

You never told those gentlemen what you could prove?—I did not.

They did not ask you?—They did not ask me.

Then I will not ask you another question.

Re-examined by Mr. HAWKINS.

Was there a gentleman at Cardiff who saw you?—How do you mean?

Do you know Mr. STEVENS at Cardiff, a Solicitor?—Yes, I do.

Did you see him?—I did.

Did you give him any information?—I did.

The LORD CHIEF JUSTICE: *The mountain and the mouse we have heard of before!!!*

EDWARD SPARK, sworn.

Examined by Mr. Serjeant PARRY.

Are you now a Cashier in the service of Messrs. MARYCHURCH & Co. at Cardiff, merchants?—I am.

Now in 1856 and 1857 were you in the employ of Messrs. CORY Brothers at Cardiff, merchants and shipbrokers?—I was.

During the latter period of that time did you know a person of the name of LUNDGREN?—From November, 1856, till the following summer of 1857.

What was his Christian name? What Christian name was he known by?—CARL LUNDGREN.

After that I think you left their employment and went into the employment of BACHELOR Brothers?—I did.

Was CARL LUNDGREN a Clerk in the same service as you were at Messrs. CORY'S?—He was.

Did you know him very well?—As a fellow Clerk.

Now when you left to go to BACHELOR'S do you remember that he rather assisted you to go there?—He did.

When did you come up to town for the purpose of giving your evidence?—Yesterday morning.

Did you see this person here (pointing to JEAN LUIE)?—I did.

Who is he?—He is CARL LUNDGREN.

When did you see him?—This morning.

Before that you had seen a photograph?—I had.

Cross-examined by Dr. KENEALY.

When do I understand you last saw him?—Do you mean here in London or in Cardiff?

You must know that?—The last time I saw him in Cardiff was just previous to my leaving the employ of Messrs. CORY BROTHERS and COMPANY.

You leave me in as great ignorance as ever, I am sorry to say.—I am sorry to hear that.

When was it, Sir?—In the following summer of 1857.

The LORD CHIEF JUSTICE: The date he gave was, "I was in their service, and knew LUNDGREN from November, 1856, to the summer of 1857."

Dr. KENEALY: That was the last time you ever saw him?—That is the last time I saw him.

The LORD CHIEF JUSTICE: You left the service?—I did.

Dr. KENEALY: You have distinct and positive recollection of him?—I have.

Could you tell me what was the colour of his hair in 1857?—I could not tell you exactly. Lightish.

You have not so distinct and positive a recollection?—Yes, I have.

The LORD CHIEF JUSTICE: What do you say about the hair—you dropped your voice?—Lightish.

Dr. KENEALY: Do you mean a dark brown, or light ash, or light flaxen?—Something the same colour as my own.

Do you call yours a light brown?—I should call that a light brown, most decidedly.

The same colour as that?—Something similar to that. I should not say the same.

Have you any recollection of the colour of his eyes?—I have not.

How long were you brought into contact with him. Did you sit in the same office?—We were continually in the same office.

Was he married at that time?—I cannot say.

You never had any conversation with him on that subject?—I did not.

When did you first find yourself engaged in this business of LUIE?—On Friday last.

How was that?—I cannot tell, only from my being in the employ of CORY Brothers at that time.

Did anybody send you or bring you a photograph?—The Solicitor at Cardiff came to see me, and brought a photograph with him.

Who was the Solicitor in Cardiff?—Mr. T. H. STEVENS.

Was that the photograph they have been selling in the shops?—I really cannot tell.

The one with a hat on?—I really do not know.

Did you not see it selling in Cardiff?—I did not.

Did you look into any of the photograph shops there for it?—I did not.

Did the lawyer tell you who it was?—No, he did not.

Did you tell him?—I told him.

What did he say to you when he brought you the photograph?—He brought it, and put it down before me, and asked me if I recognized it.

You at once did?—I did, from the upper part of the face.

Had LUNDGREN a long flowing beard when you knew him?—Not a very long one. He wore his beard at that time cut away from here to here (pointing).

Did it come down as many inches as that?—Not so far as mine might; it was a short beard cut away from here. No whiskers from here (pointing), and a short stubby moustache.

Was it a beard like that (handing the Chatham photograph to the Witness)?—Yes, but not up the side of the face.

No whiskers; but a beard like that?—Below the chin.

I am putting that before you: was it a beard like that you see in the photograph?—Except so far as the face is concerned.

What do you mean by that?—Up by the side of that.

I am talking of beard, not whiskers?—Like that.

The LORD CHIEF JUSTICE: Like the photograph, was it?—Yes.

Dr. KENEALY: In 1859?—In 1857.

In 1857 it was a beard like the photograph. How long was Mr. T. H. STEVENS with you?—I really cannot say.

Did he take your evidence?—He took down a little in writing.

Did he take your evidence?—He just took down a few words in writing.

Did you swear anything, or sign anything?—Nothing at all.

Who did you see when you came up to town?—I saw no one till this morning.

This morning who did you see?—I saw Mr. STEPHENSON.

And did you see those other gentlemen who are there?—I saw that gentleman with the white hair (Mr. BOWKER).

You are sure to see him. And two others I suppose?—Another gentleman.

Those two gentlemen (pointing)?—No; I do not recognise anyone else.

Did they show you the photograph?—They did not.

Did you show them the photograph?—No; I had no photograph with me.

Was it produced at all?—There was a photograph handed round the room.

Did you see it?—I saw it.

Who handed it round the room?—I do not know who handed it round the room.

In whose hands did you first see it? Was it any of those gentlemen?—No.

Do you know Detective CLARKE?—I do not.

It was handed round the room, and no conversation about it?—Certainly not.

Re-examined by Mr. Serjeant PARRY.

Was your statement taken down at Cardiff?—Yes.

By Mr. STEVENS?—By Mr. STEVENS.

[Adjourned till to-morrow morning at 10 o'clock.]

ONE HUNDRED AND THIRTY-SEVENTH DAY.—TUESDAY, DECEMBER 9TH, 1873.

Mr. FREDERICK PALMER, sworn.

Examined by Mr. HAWKINS.

I believe you are in attendance from the Office of the Directors of Convict Prisons, in Parliament Street?—Yes.

You have produced here this Volume which I have. It is the "General Register of Male Convicts Sentenced to Seven Years' Penal Servitude"?—It is one of the registers.

This is Volume 1?—Volume 1.

Is this a register which is kept containing, as far as you can get them, the photograph of each Convict, with a description of each Convict, and the period of his sentence?—The photograph is sent up after the release of the Convict.

(The book was handed up to their lordships, who examined the photograph of LUNDGREN.)

Mr. HAWKINS: I have put a paper in the entry that relates to LUNDGREN.

The LORD CHIEF JUSTICE: (To the Witness.) You want the book, I suppose?—We shall require it again; not to-day. I must not give it up out of my possession.

That I cannot assent to whatever. (Laughter.) It is produced here, and we retain it if we think it necessary?—Very good.

I do not think it will be. We will have it copied.

Mr. HAWKINS: I rather think that contains the same particulars that are in the printed paper we had yesterday.

The LORD CHIEF JUSTICE: It is the same thing.

Cross-examined by Dr. KENEALY.

Do you know anything about the custom of entering the marks of Convicts or Prisoners in gaol?—In what way? I do not quite understand the question.

Suppose a man has marks on him, are those marks registered and entered in the book?—The marks are generally taken in the Prison, previous to his coming into a Government Prison, and entered on a record called a penal record. That is done by the Governors I suppose of the Prison which he is transmitted from.

What I want to know is this: are the marks entered in the Prison from their own personal inspection, or do they take the marks as returned to them?—They ought to be previous to the release of every Prisoner.

Previous to the release of every Prisoner?—They ought to be examined.

To see whether the marks corresponded with the entry in the book?—Yes, and the initial of the Governor is placed against those marks. If there are more than what appears in the penal record it is generally inserted, and the initial of the Governor placed to it.

Are the men stripped before they are examined?—To a certain extent.

Does the Doctor ever examine them?—I believe so.

Also for marks?—As regards marks I do not say he does. It is merely physically.

Can you tell me whether their mouths are examined to see whether they have lost any teeth?—They are supposed to open their mouths at the time they are examined.

To see whether they have lost any teeth?—To see whether they have lost any teeth.

And if they have that is entered?—I believe so.

Does your Office get any record of that kind?—I do not understand the question.

You have produced this volume from your Office?—Yes.

I want to know whether there is any record in this volume, or in any other volume that you have in your Office, of the marks upon Convicts and Prisoners?—They are not all inserted in that register. It will be found on the penal record. There are sometimes marks on the penal record.

Who keeps the penal record?—That is kept in the Prison in which the Prisoner is in during the time he is in confinement. When he has received his license the penal record is sent up to the Directors of Convict Prisons.

Is this what you call the penal record, or is it another volume?—The penal record is another paper altogether. That is a copy from the penal record.

You have the penal record of LUNDGREN?—Yes.

At your Office?—Yes.

You have not brought it here?—Yes, I have.

That is what I want to see.—Mr. HAWKINS has it.

I should like to see that penal record. (After a pause.) It is here, and they do not choose to produce it.

Mr. HAWKINS: That must not be said.

Dr. KENEALY: Where is it?

Mr. HAWKINS: Anything that is called for by the Defendant's Counsel, if it is evidence, shall be produced; only then I must produce it under the ordinary rule that they must put it in.

Dr. KENEALY: The penal record is here, and they decline to produce it.

The LORD CHIEF JUSTICE: Oh! no.

Dr. KENEALY: With all submission, my lord, that is what Mr. HAWKINS says. He says, "You can have it if you think fit, but you must make it your evidence. I decline to put it in." That is as I understand what he says.

The LORD CHIEF JUSTICE: Why is he called on to put it in? He has put in what he thinks necessary.

Dr. KENEALY: He has put in what he has copied from it. The penal record is the original document, and he has put in a copy.

The LORD CHIEF JUSTICE: If you had objected to it.

Dr. KENEALY: How could I object when I did not know?

The LORD CHIEF JUSTICE: I quite agree.

Dr. KENEALY: I now object, as the original is here.

Mr. HAWKINS: All I say is this. I have not declined to produce it at all. In good time I shall put in everything.

The LORD CHIEF JUSTICE: Dr. KENEALY does not ask you to produce it for the purpose of his putting it in. He calls on you to produce it, and it is a matter for you to exercise your own discretion on you having to put it in.

Mr. HAWKINS: I decline to be dictated to.

Dr. KENEALY: There is no dictation in the matter. It is simply asking to put a document in. If that is to be called dictation, I do not know what we shall hear soon. I am sure there was nothing intended as dictation, either intended or expressed. I object now to this document because it seems to be a copy of an original; something copied from an original.

The LORD CHIEF JUSTICE: This is the proper official record of it, as I understand. Although there is some other book in which it is made up, this is the final book kept officially. (To the Witness) Is that so?—Yes.

The LORD CHIEF JUSTICE: I do not quite see that your objection holds. Is it worth while, Mr. HAWKINS?

Mr. HAWKINS: It is worth while, because I desire to do things regularly. I am going to call a Witness who will prove the document. I cannot put a document in until it is proved. I should be told then it is a forgery.

Dr. KENEALY: My friend's conscience strikes him on the subject of forgeries. (Laughter.)

From your knowledge is it the right and proper thing to enter upon the penal record every mark on the Convict's person?—Decidedly.

Is that directed under Prison rules?—Yes, decidedly.

There is a Prison rule requiring that?—Yes.

Now are you aware when a ticket-of-leave man leaves a Prison, whether notice is sent to any place that he has left that Prison on ticket-of-leave?—Yes.

Sent to what place?—Sent to the police to the district to which he is going, with a photograph also.

Then is no notice sent to any other district but that one?—Not that I am aware of—yes, I beg your pardon, to the Registrar of Criminals in Whitehall.

Now suppose a ticket-of-leave man is coming to London, where is notice sent to in London with reference to that man?—According to the district which he is going to in London; it is sent to that division of police. If he is going to the Prisoners' Aid Society, it would go there. It would be taken there by an agent we have in the establishment.

Supposing a ticket-of-leave man gives an untrue description as to the district to which he is going, do the gaol authorities take no precaution against being deceived?—I think not. I do not see how there can be.

They confine their notice simply to whatever district the ticket-of-leave man tells him he is going to?—He first of all gives that information to the Governor of the Prison from whence he is released. The Governor of the Prison communicates with that district, and also communicates with the Registrar of Criminals at Whitehall.

Suppose he says, "I am going to London"?—We must have his destination.

Suppose he says, "I do not know which district I shall find refuge in, I cannot tell you," what would be done under those circumstances?—We should communicate then with Whitehall Yard.

To ask what you should do, or simply to communicate with Whitehall Yard?—It is very seldom that that is the case. I cannot give you a direct answer with regard to that. It is so seldom it is the case, that I cannot say what proceedings would be taken.

Whatever district he is going to, how often must he report himself in that district?—He reports himself on receiving his liberty, and he must report himself if he removes from one district to the other. He must report the circumstance.

Supposing he does not?—The police will look after that. It sometimes follows that he does not. He is liable to forfeit his license if he does not.

It is the duty of the police to look after him if he does not report himself, and he is liable to forfeit his license?—Certainly.

Mr. Justice LUSH: The Act of Parliament prescribes that.

Dr. KENEALY: Probably everybody does not know it, and I thought it would be well to have it on your lordships' notes.

If he does not report himself have they not authority to arrest him?—That authority, I believe, is given from the Secretary of State's Office.

You have known it, I suppose, to be given when a man does not report himself?—If he does not report himself the notice is sent to the Home Office. What follows I am not prepared to say.

How soon after he fails to report himself is notice sent to the office in Whitehall that he has failed to do so?—How soon after?

Yes; how often must he report himself in the first place?—Only once. He reports himself to the police of the district in which he is supposed to be living.

Immediately on his arrival?—On his arrival.

Well, then, he fails to report himself?—If he fails to report himself—if he removes from that district and fails to report he has removed, he is liable to forfeit his license.

And is communication made to the office in Whitehall that he has failed to report himself?—I do not know anything about Whitehall.

I thought you knew what the practice and custom was. You do not know?—I cannot say. I will not pledge myself to say that. I suppose so. I have no doubt it is so, but I cannot say. I only know as to the office to which I belong. That is a connection of the Home Office, but it is a different department.

Does your office at all get into communication with Whitehall when the report is made that the man has failed to report himself?—Yes, if that is the case; if he forfeits his license we receive what we call a revocation of the license, and the Prisoner is transmitted to Millbank Penitentiary Prison, and he is supposed to undergo the remaining portion of his sentence unexpired.

Mr. JAMES CRANSTON, sworn.

Examined by Mr. HAWKINS.

You are one of the Warders at Chatham Convict Prison?—I am.

I think you are what is termed the Discipline Clerk, is that so?—Yes.

Will you just take these papers in your hand. I think you will find the first one is a private memorandum of your own. Will you be good enough to take that off and look at the other papers. (Some papers were handed to the Witness.) First of all let me ask you is there any practice at all as to sending the record of a Convict's former offences and of his description to the Prison in which he is confined for a sentence?—Penal record accompanies the Prisoner to the Governor of the Prison.

The penal record accompanies the Prisoner to the Convict Prison?—Yes.

Mr. Justice MELLOR: Penal record from where?

Mr. HAWKINS: A penal record first of the conviction under which he is sentenced, is that so?—Right.

And all the former sentences?—Yes.

Mr. Justice MELLOR: What I want to know is this, who is it sent from and to whom?—Cardiff to Millbank.

Mr. HAWKINS: This is the "Caption of a Convict on his removal to a Government Prison"?—Yes.

Mr. Justice MELLOR: Where does that come from?

Mr. HAWKINS: This is with reference to the last sentence. Do you remember this?—No, that comes from Cardiff. You will see at the bottom "Prisoner received in Millbank and removed to Chatham," and the date at the bottom.

That accompanies the Prisoner?—From Cardiff to Millbank, and from Millbank to Chatham.

This shows when he was received into Cardiff Prison?

Dr. KENEALY: I do not know about this. This Witness can have no knowledge of this document. It can only be known to whoever made it.

The LORD CHIEF JUSTICE: All he knows is that that document accompanied the man LUNDGREN to the Prison.

Dr. KENEALY: That does not make the entries in that document admissible, and that was what Mr. HAWKINS was proposing to read when I interrupted.

Mr. HAWKINS: If your lordships, for you own satisfaction, will look at that document, it is immaterial to me to read these entries; it is only for the purpose of explaining what the document is. (It was handed to the Court.) If your lordship will look at the bottom of it you will see exactly what it is.

Mr. Justice MELLOR: Do you receive such a record with every Prisoner who comes from other gaols to Convict establishments?—Yes.

That is the general course of business—is it?—Yes.

Mr. HAWKINS: As I understand, with every Convict some paper similar to that is sent?—Yes.

So that that is the original record of the transfer from one place to another?—Yes.

The LORD CHIEF JUSTICE: It adds nothing to what has gone before.

Mr. HAWKINS: It is only for another purpose. A description was handed in; I said the original one I should produce. This gentleman was not here. Was it you who took the description?—Yes.

Of LUIE?—Of LUNDGREN, before he was discharged.

Did you notice yourself the contraction of the fingers?—Yes.

The LORD CHIEF JUSTICE: You noticed that yourself?—Yes.

Mr. Justice MELLOR: Which finger?—The little finger of each hand.

Mr. HAWKINS: I see that is entered in what you call the penal record?—Yes.

How long before his dismissal from Prison was it that you noticed this little finger that is contracted?—The same day his photograph was taken his description was taken; he is marched from the photograph room to the infirmary, and then he is stripped, and I examine him.

Mr. Justice MELLOR: I do not quite understand what you mean. Will you repeat it?—Before a Prisoner is discharged he is taken to the photograph room and photographed. From there he is marched to the infirmary, and then he is stripped, and I examine his person.

To the Infirmary?—To the Infirmary. I examined his person when I noticed his finger was crooked. I looked here (pointing to JEAN LUIE), and I see it was here. I told him to turn round, and examined him all over, and added what was not in the penal record before, also his height—I put him under the standard. I altered the height. He was not the height then he was when convicted.

The LORD CHIEF JUSTICE: What, the height?—He was five feet seven and a quarter inches, and he was only five feet seven when he was discharged.

Mr. HAWKINS: Have you a penal record of the conviction at Bristol? (It was produced.) Just hand that to me. Now, in the ordinary course and according to ordinary practice is the date of the discharge of the Prisoner marked upon the penal record?—Yes.

Will you look at that (a document was handed to the Witness)? That is with reference to the Bristol one?—That is so.

That is the original one?—That is the original copy.

This is "CHARLES LUNDGREN, date of committal, reception, and removal. Committal October 18th, conviction October 24th, 1862." It seems that under that conviction he was discharged on the 11th of April, 1865, on license. Your lordships will see the endorsement there. (It was handed to the Court.) There seems to have been a remission of several months.

The LORD CHIEF JUSTICE: "Convicted October 24th, 1862." Then there is the date, of the various prisons, discharged on license. Then there is the number of the license given, 16242. 11th of April, 1865.

Mr. HAWKINS: On license, I think it is.

The LORD CHIEF JUSTICE: Yes.

Mr. HAWKINS: Your lordships will find under that a memorandum that he went to the Discharged Prisoners Aid Society, "D. P. A. S." Is that what the meaning of it is?—Discharged Prisoners Aid Society.

Just look at that man who sits there (pointing to JEAN LUIE). Do you recognise him?—Yes.

As whom?—JOHN LUNDGREN.

The man whose description you took?—The man whose description I took.

Have you seen his fingers this morning?—Yes, I was told to go into a room. He was walking up and down; I said, "LUNDGREN, show me your hands;" he showed them to me.

Did you see them?—Yes.

Mr. Justice LUSH: I am not sure I caught the answer. You told him to hold up his hands?—I said, "LUNDGREN, show me your hands;" he showed them to me.

Mr. HAWKINS: In the fingers as he presented them to you, was there the same contraction that you observed in the man you have written the description of here (pointing to a paper)?—Yes.

Mr. Justice MELLOR: At the infirmary?—The infirmary or hospital.

Mr. Justice LUSH: How do you say you addressed him?—"LUNDGREN, show me your hands."

What did he do?—Took them out of his pockets and he did so (explaining).

Then you observed the contraction?—I did.

Mr. HAWKINS: I refer your lordships to page 207 (Vol. VI.) of the cross-examination of LUIE, and his re-examination also.

Cross-examined by Dr. KENEALY.

Did you observe him very carefully before he left the prison?—Yes.

And took notice of the deformities of his hands?—I did see the deformities of his hands, and I would have entered them, but when I looked at the penal record I found they were already entered.

Were they the same as they were entered in the penal record?—Yes, both little fingers crooked.

Both little fingers crooked as in the penal record.

The LORD CHIEF JUSTICE: I have not seen that. Have you the penal record?

Dr. KENEALY: He is referring to the thing not proved.

The WITNESS: That is it.

The LORD CHIEF JUSTICE: Just let me look at it. (It was handed to the Court.) That was taken at Cardiff. What you say is in the penal record.

Mr. HAWKINS: As I understand, there is some of his own handwriting in that very document.

The WITNESS: "The description of person."

Mr. Justice MELLOR: What I understood him to say was, seeing the contraction, he looked at the record to see if it was there, and found it there already, therefore he did not add anything to that.

Dr. KENEALY: That is what I understood. You found that corresponded?—Yes.

The LORD CHIEF JUSTICE: You found what you found there corresponded?—Yes; part of it is in my own handwriting.

Which is?—"Several moles on back."

"Moles right side of the body, several moles on back, both little fingers crooked."—The first part is mine.

Mr. Justice MELLOR: The moles?—Yes.

The LORD CHIEF JUSTICE: You added the moles to the rest?—Yes.

"Both little fingers crooked" was there already?—Yes.

The LORD CHIEF JUSTICE: Am I to take this as in?

Dr. KENEALY: No, I think not, my lord.

The LORD CHIEF JUSTICE: You object to it?

Dr. KENEALY: That part is in which the Witness himself has written.

The LORD CHIEF JUSTICE: Why not the whole? It is an official document sent with the man whoever he was.

Dr. KENEALY: I have not seen it; will your lordship let me see it?

The LORD CHIEF JUSTICE: The question is open as to whether it rests with the Witness LUIE or whether it does not, but with regard to LUNDGREN it is an official document returned in the course of business and duty. (The document was handed to Dr. KENEALY.)

Mr. Justice MELLOR: Do you object?

Dr. KENEALY: No, my lord, I do not.

The LORD CHIEF JUSTICE: I do not think it is open to objection.

[The following document was handed in.]

(City and County of Bristol. Order of Quarter Sessions, October 24, 1862.—Committal of CHARLES LUNDGREW.)

At the General Quarter Session of the Peace, holden in and for the City and County of Bristol, on Tuesday the Twenty-first day of October, in the Twenty-sixth year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of Our Lord One Thousand Eight Hundred and Sixty-two, and thence adjourned from to-day unto this twenty-fourth day of October, One thousand eight hundred and sixty-two, before the Recorder of the said City and County, Justice of our said Lady the Queen, assigned to preserve the Peace in the said City and County, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanours done and committed therein.

Whereas at this present quarter Session of the Peace, CHARLES LUNDGREN late of the Parish of Saint Augustine the Less in the said City and County, Labourer, is and stands convicted of feloniously stealing a Valuable Security the property of ERNEST AUGUST HENELIUS, it is thereupon this Twenty-fourth day of October, One thousand eight hundred and sixty-two Ordered and adjudged by this Court that the above-named Convict be kept in Penal Servitude for the term of three years.

By the Court,
JAMES DAVISON WATHAM,
Deputy Clerk of the Peace.

Dr. KENEALY: Will your lordships allow me to look at LUIE'S fingers?

The LORD CHIEF JUSTICE: Certainly. [JEAN LUIE then approached the Witness-box and held up his right hand. The third and little fingers appeared to be rigid and to stand at right angles to the palm of the hand.]

Dr. KENEALY (to Witness): You see that man's two fingers. They are immoveably doubled down. Did you notice that when you wrote "Both little fingers crooked"?

The LORD CHIEF JUSTICE: He had better look at them. (The Witness did so, and taking the finger in question in his, and apparently using some force said): That (the third finger) will go back right enough; that is not crooked.

Dr. KENEALY: Did you put it back?—I did.

Now?—Yes.

Mr. Justice LUSH: One, or both?—One.

JEAN LUIE: You did not.

Dr. KENEALY: Did you try the other?—I will try them now if you like.

Try them both.

Mr. Justice MELLOR: The other is not.

(JEAN LUIE held up his left hand.)

Mr. Justice LUSH; Is there a finger on each hand that is immoveable?—It is crooked.

JEAN LUIE: Crooked! Oh! that is nothing.

Mr. Justice LUSH: One, or more than one?—One only.

Dr. KENEALY: Do you mean to say the little finger of his right hand is crooked? look at it again.—I do.

That is crooked, you say?—I do.

Have you tried to double down the third finger on the other hand as well as the fourth? Have you tried to double down both?—The little finger, it is crooked like that.

And you cannot push it back, do you say?—Not straight.

Can you push either of them back straight?—This one, it went.

It went?—I moved it.

If a man is ruptured, is a note made of that in Prison?—I think there is, by the doctor.

The LORD CHIEF JUSTICE: I see that is one of the things put down here. Hernia is marked in one or other of these documents. Do you know what this document is (holding up a paper)?—Medical history of every prisoner.

Who enters that?—The doctor.

Do you produce this, because I find it on my desk?

Dr. KENEALY: Is that the medical history of LUNDGREN?—It is, I believe.

Does it appear that LUNDGREN was ruptured?

The LORD CHIEF JUSTICE: Yes.

Dr. KENEALY: Have you the medical man here who examined LUNDGREN when he was leaving?

Mr. Justice MELLOR: Do you know whether the medical man is here?—I do not know.

Dr. KENEALY: Who is he?—Dr. BURNS is the Medical Officer at Chatham Prison.

And it would be his duty to examine the Convicts when they are leaving or when they come in?—I do not belong to the infirmary at all. I belong to the Governor's Office.

Cannot you tell us whether the medical man examines Convicts? I should have thought a simple thing of that kind you must have known at Chatham Prison. How long have you been there?—Seven years and two months.

Do you really mean to say you do not know the medical man examines the Convicts?—I do not know the medical man examines the Convict. Just before leaving he is taken to the infirmary to be measured and examined. I have not been present at the time.

Is the man examined, so that if he had been ruptured it would be shown?—It would be shown on his reception. He is examined by the Medical Officer at his reception.

What is the date of the paper of the man having hernia?

The LORD CHIEF JUSTICE: MAYHEW is the signature of the Medical Officer, but I do not see any date; merely the conviction, and entrance, and reception, and so forth, of the Prisoner. It is signed by the Officer, but has no date.

Dr. KENEALY: The Officer of what Prison?

The LORD CHIEF JUSTICE: It is entitled "Medical History Sheet, to be kept by the Medical Officer, forwarded with the Prisoner on his removal. Name, age, place of birth, country, place of abode;" then the offence, sentence, committal, conviction—penal servitude; vaccination, "Yes;" general health, good; physical condition, muscular; morbid condition, at present, hernia; for what labour most fit, any; height, 5 ft. 7 in. Then there are the dates of reception, removal, weight in pounds,—

on reception 154, on removal or discharge 135. At the back of the paper there is the word "Chatham," under the name Prison.

Mr. Justice Lush: What is the name of your Medical Officer?—Dr. Burns is the Medical Officer. The Assistant Medical Officer is Dr. Mayhew, Assistant-Surgeon.

Dr. Kenealy: It would appear from that that Lundgren was ruptured at the time of his discharge.

The Lord Chief Justice: I suppose so. I take it this paper is at the time of the discharge.

Dr. Kenealy: I shall ask your lordships to make an order for the examination of this man (Jean Luie) to see whether there is any trace of rupture upon him.

The Lord Chief Justice: We will do that afterwards. We have no power to make any such order.

Dr. Kenealy: I understand the man is quite willing to be examined to see whether there are traces of rupture upon him. As he is in Prison there is no objection to his being examined by a Medical Officer on behalf of the Crown, and I suppose your lordship would think it right there should be a Medical Officer on behalf of the Defendant present.

Mr. Justice Lush: Mr. Mayhew ought to be present.

Dr. Kenealy: Mr. Mayhew ought to be there if he likes, and some medical gentleman, on behalf of the Defendant, to see whether there is any trace of rupture in Luie. Perhaps Mr. Harcourt and the Solicitor to the Treasury may arrange a time and give us notice when the medical gentleman should attend.

The Lord Chief Justice: Very well. (To the Witness) You have looked at those fingers now?—Yes.

And, as I understand, you looked at them shortly before his discharge in the present year?—Yes.

Now, do the contractions which you have seen on the fingers of the Witness Luie correspond with the contractions you saw on the fingers of Lundgren?—Yes.

JAMES WILLIAM FOSTER, sworn.

Examined by Mr. Serjeant Parry.

Are you now a Clerk in the firm of Messrs. R. W. Parry and Company, of Cardiff?—The firm is now altered to R. W. Parry and Brothers.

You are in their employment now?—Yes.

How long have you been in their employment?—Eleven and a-half years.

You were there, of course, in the year 1867?—I was.

Are they merchants and shipbrokers, or shipbrokers only?—They are both.

Now do you remember about September, 1867, a person coming to Messrs. Parry's office who represented himself by the name of Captain Safstrom?—Yes, I do.

Have you seen that person since?—Yes.

When?—Yesterday.

Is that the man that you see sitting there (pointing to Jean Luie)?—Yes.

What did he say, do you remember, when he came in September, 1867; what was the object of the visit?—He said he was the master of a vessel called the 'Caroline,' which had just arrived in the Penarth Roads.

Lying in the Penarth Roads?—Yes.

Are they near Cardiff?—Yes.

Now tell us what he said.

Dr. Kenealy: Does your lordship think the Witness is entitled to go into these details? I can understand that a Witness may be called to dispute the identity of another Witness by saying, "I saw him at the time when the Witness fixes his locality at different places;" but I humbly submit they cannot enter into particulars of conversations. That is for cross-examination if the Counsel for the Defendant chooses to enter into it. All they can be asked is as to the single fact.

Mr. Serjeant Parry: My object in putting this question is to identify this person as the person who was convicted of obtaining £20 by false pretences.

The Lord Chief Justice: Is the transaction to which the Witness is now called upon to speak the transaction which was the subject matter of the indictment?

Mr. Serjeant Parry: Yes.

The Lord Chief Justice: Do you want anything more than that? (To the Witness) Were you a Witness on the Trial?

The Witness: Yes.

The Lord Chief Justice: That is all you want?

Mr. Justice Lush: You do not want the minute particulars.

Mr. Serjeant Parry: If your lordship thinks so.

Mr. Justice Lush: He made an application for money?—Yes.

The Lord Chief Justice: And obtained it, as I understand?—And obtained it. He signed our book for the amount.

Were you present when he was given into custody upon the charge?—I was.

You were afterwards on the Trial?—Yes.

Mr. Serjeant Parry: You were a Witness against him, were you?—I was.

This man who you speak of and see is the same man?—Yes. He is the man that I appeared against.

Cross-examined by Dr. Kenealy.

Is he at all altered since you saw him in 1867?—He has a little more hair just in the centre of the chin.

And was the centre of the chin occupied by hair at the time, or was it bare?—About the same as your own; just a little.

Was the man as bald then as the man you see before you?—Yes.

When was your attention first called to the man?—Last Friday.

By whom?—By the Attorneys who prosecuted him for Messrs. Parry in 1867.

Are those the Stevenses?—No; another firm—Ingledew and Ince.

Did they send for you?—Yes.

Did they have some conversation with you about it?—He asked me if I remembered the transaction. I told him yes.

Did they show you any photograph?—Ingledew did not show me any photograph.

Did anyone at the office?—I saw one at Mr. Stevens' office.

Did you go to Mr. Stevens' before you went to Ingledew?—Ingledew sent for me, and sent me on to Stevens.

How long were you with Ingledew?—About ten minutes.

Talking of the matter?—I was waiting to see him; he was engaged at the time.

How long were you with Ingledew?—Himself?

Yes.—About three or four minutes.

I suppose you talked to him about the matter?—He asked me if I remembered the transaction. I told him I did.

Had you talked to anybody before you went to Ingledew about this old affair in 1867?—Do you mean the same day, or previously?

I do mean the same day, previously, if you like?—I have repeated the transaction to many people who asked for it.

Before at all you went to Ingledew?—Yes.

Had you seen a photograph at all before you went to Ingledew?—Yes, I saw one in the morning.

Who showed it you?—A person in Cory Brothers' offices in Cardiff.

Was it a Clerk in the office?—Yes.

Showed you the photograph of Luie?—It was represented to be the photograph of Luie.

I suppose you and he had a good talk about it?—No, I do not know we had. He brought it to me, knowing I had appeared against Lundgren in 1867.

Did he tell you, "here is your old friend Lundgren turned up?"—No. He asked me if I recognised it.

Was he at all acquainted, to your knowledge, with Lundgren?—I believe he was.

The Lord Chief Justice: Was he the young man who was examined here?—No, another Clerk in the same office.

Dr. Kenealy: You had a bit of talk about it, and you were quite sure that was the photograph of Lundgren?—Yes, I think it is.

You were, before you went to Ingledew, quite sure about it?—Oh, yes.

Then you went to Mr. Stevens, and Mr. Stevens showed you another photograph?—Yes.

Had a bit of talk with him about it?—He asked what I knew about the transaction.

I suppose you told him all you knew, and he asked you some further questions?—No, he did not.

How long were you with Mr. Stevens?—A quarter of an hour.

Have you been shown any other photographs besides these two?—I saw one yesterday.

Was that the third you saw?—That was the third I saw.

Who showed you that?—I saw it lying in the solicitors' office.

In the lawyers' office here?—Yes.

Did anyone show it to you?—It was lying on the table. I took it up.

Have you any recollection at all of the colour of Lundgren's hair? Do not look there (pointing to Jean Luie). That is not fair.—I was going to say I do not think it is much altered.

That was not quite fair. I ask you as to colour. Do you remember what the colour was without looking there, and refreshing your memory?—Brown.

What sort of brown; there are many shades of brown: do you call it a light brown or a dark brown?—I should say a medium.

You do not remember, I suppose, what coloured eyes he had?—I do.

What?—Blue eyes.

You have distinctly remembered those ever since 1867?—Yes.

Did you ever have more than one conversation with him in 1867?—With Lundgren?

Yes.—I took him into the office, and was there when he was in the office obtaining the money.

That is the only time you ever came actually in conversation with him?—Except I apprehended him, and when before the Magistrates.

Mr. Serjeant Parry: And at the Trial afterwards?—Yes.

HENRY BRINHAM BUCKINGHAM, sworn.

Examined by Mr. Serjeant Parry.

Were you in 1867 in partnership with Messrs. Parry and Company, merchants and shipbrokers at Cardiff?—I was.

Do you remember in September of that year a person coming to your office under the name of Safstrom?—Yes.

Have you ever seen that person since?—I saw him yesterday.

Is that the man (pointing to JEAN LUIE)?—That is him.

Were you present when he was given into custody on a charge of obtaining £20 from your firm?—I gave him into custody myself.

Were you afterwards present at the Trial at Cardiff?—Yes.

And before the Magistrates?—Yes.

Are you quite sure that was the same man?—Quite.

Under what name was he tried, do you remember?—LUNDGREN.

Mr. Justice MELLOR: The name as I understood you knew him by was what?—SAFSTROM. "L. SAFSTROM," he signed his name.

Cross-examined by Dr. KENEALY.

Had you ever more than one personal communication with LUNDGREN?—In 1867 do you allude to?

Of course I allude to it?—No.

Did anyone show you photographs before you came to town?—On Friday I saw a photograph at Cardiff.

Who showed it to you?—Mr. STEVENS, after asking me some questions, asked me if I could recognise, and he showed me a photograph.

Asked you what?—If that was like the person he had been speaking about.

He had been speaking to you about LUNDGREN all the time?—He had been asking me if I recollected Captain SAFSTROM who had been convicted in 1867.

SAFSTROM and LUNDGREN was the same person?—So it appears.

He had been talking to you the whole time?

The LORD CHIEF JUSTICE: "The whole time" would seem to imply a continued conversation. I understand him to give the exact conversation that occurred.

Dr. KENEALY: How long were you with STEVENS?—I suppose about a quarter of an hour. He called at my office on Friday to see me.

After your memory was recalled to that past transaction, he asked you if that was the man?—He asked me if I could recognise that as the man.

Showing you a photograph of LUIE?—Showing me a photograph.

The one with the hat on?—The one with the hat on.

And you at once recognised it?—I did, but not from that. I said I thought it looked very much like him.

Then I suppose there was some further conversation between you and STEVENS?—Not until the Saturday after—the day after.

Did you fail to recognise it on Friday?—I could not say thoroughly that was the man from the photograph on Friday. He had got a slouching hat on his head.

Did you ever see a sailor without a hat?—Many a time.

You did?—I did.

The LORD CHIEF JUSTICE: Not a sailor's hat?—A slouching hat.

Dr. KENEALY: Are you sure you ever saw a sailor without a hat?—Yes.

I am told it is quite a phenomenon?—It is not; I have experienced differently myself.

You have seen a sailor without his hat?—Yes.

Was it on the Saturday that you made up your mind about him?—I had not made up my mind to say he was LUNDGREN.

You did not on Saturday?—Not even on Saturday.

I am glad you took time to consider. When did you finally make up your mind it was LUNDGREN?—Directly I saw him yesterday.

Had you been shown any other photographs in the interval?—I had.

Did they show you the Prison photograph?—I do not know if it was the Prison photograph.

The one with the bald head?—That is it.

Who showed you that?—I do not know. Some gentleman in Court.

One of the gentlemen here (the Crown Solicitors)?—Yes, I think it was.

Which of them? I would like to know?—I think it was the venerable gentleman there. (Laughter.) *

Mr. BOWKER was the gentleman who showed it to you?—I think that was him.

After receiving that from his venerable hands you had no doubt that was the man?—Not the least when I saw the photograph.

When you saw the bald head?—Not in the least when I saw the photograph.

I thought you said you did not recognise him until you saw the man himself in Court?—When I recognised him in Court I recognised him in Court as the man.

Was not that the bald head in the Prison photograph that Mr. BOWKER showed you?—I knew he had a bald head previous to that.

Did you recognise him in the photograph Mr. BOWKER showed you?—I recognised him more fully by that than the first photograph.

Were you doubtful until you saw the man himself?—I was under no doubt after I saw the second photograph.

* The cause of this laughter was because Mr. BOWKER had perfectly white hair, and a wonderfully juvenile appearance.

I thought I understood you to say it was when you saw the man himself?—I recognised himself when I saw him.

After Mr. BOWKER's photograph you had no doubt?—No doubt.

How long were you talking to Mr. BOWKER?—Some five minutes.

That convinced you?—During the time I was talking to Mr. BOWKER—while I was talking to him I lifted my eyes up and saw LUNDGREN in the Court. I was not aware he was in the office before I looked. I said at once "That is the man."

Mr. Justice LUSH: What did he wear on his head when you saw him in 1867?—A glazed cap he came into the office with.

Mr. GEORGE SULLY STONE, sworn.

Examined by Mr. HAWKINS.

Do you live at Mount Stewart Square, Cardiff?—I do.

Are you a shipbroker and merchant there?—I am.

How long have you been in business in Cardiff?—About twenty-five years.

Dr. KENEALY: I cannot find any notice of this gentleman given to us.

The LORD CHIEF JUSTICE: That is matter for observation.

Mr. J. J. COOPER-WYLD: If your lordship remembers, in the application made in Chambers the other day it was distinctly understood notice of all Witnesses were to be given to the Defence.

Mr. Justice MELLOR: As to all whose names they were in a condition to give, we said it ought to be done.

Mr. J. J. COOPER-WYLD: More than that. The Prosecution said notice should be given, and Witnesses' names should be furnished to us.

Mr. HAWKINS: I was not before your lordship; therefore I cannot tell you what passed.

Mr. A. K. STEPHENSON: There was no notice of this Witness; he only came up yesterday morning.

The LORD CHIEF JUSTICE: We will see.

Mr. A. K. STEPHENSON: There are several others we had not got notice of.

Mr. Justice MELLOR: It was said there were some whose names had not been given because they had not either seen LUIE, or they had not actually got their correct names at that time.

Mr. J. J. COOPER-WYLD: That may be so, but your lordship remembers the ground on which I pressed it upon you was that we should have an opportunity of knowing who these people were, in order that we might get some information.

Mr. Justice MELLOR: We said the best that could be done for you ought to be done, so as to give you the best information that could be given. We could not control them. We could do no more than say that ought to be done. That we did say.

The LORD CHIEF JUSTICE: If any prejudice should appear to you to be suffered by reason of your not having known of the Witnesses before, and you make that matter of special application, we might have the Witnesses back again.

Mr. HAWKINS: In 1854 was your firm a firm of SULLY and STONE?—It was.

Had you in your service a Clerk named LUNDGREN?—Yes.

Mr. Justice MELLOR: In 1854?—Yes.

Mr. HAWKINS: What was he in your service?—A Clerk, principally out-door.

Mr. Justice MELLOR: What Christian name, do you remember? Was it CARL?—I could not speak positively to that.

Was he there at weekly wages?—Yes.

Can you tell me when the first week's wages were paid to him?—I found 30s. 9d. paid to him on the 25th of November, 1854.

The LORD CHIEF JUSTICE: Where is that entry?

Mr. HAWKINS: You have got your cash-book here?—I have not. It is at Cardiff.

That is a book in use in your business?—I took a memorandum from it before leaving.

From the book itself?—From the book itself.

The LORD CHIEF JUSTICE: Paid it him when?—25th November, 1854.

Mr. HAWKINS: How long did he continue in your service?—I find the last payment was the 19th of February, 1855. I have traced it as far as that.

Then, between November 1854 and February 1855 was he in your service?—He was in our service.

Do you know after leaving you, where he went to?—I thought he went to Bristol to MARK WHITWELL and Company. I am not certain about that. I know he was there with MARK WHITWELL and Company.

But whether he went direct from you, you do not know?—I do not know.

The LORD CHIEF JUSTICE: How did you know he was with them?—I saw him several times when paying visits to Bristol.

Mr. Justice MELLOR: What firm at Bristol?

Mr. HAWKINS: MARK WHITWELL. We had one of the gentlemen of the firm yesterday. Now, have you seen the man LUIE?—I saw him yesterday morning.

Did you recognise him as anybody you had seen before?—I recognised him as the man who had been in my service before.

Mr. Justice MELLOR: Under the name of LUNDGREN?—Under the name of LUNDGREN.

Mr. HAWKINS: You had your attention drawn to a photograph

before you came to town?—I saw a photograph at Cardiff before leaving.

What information you could give upon the matter you gave to Mr. STEVENS there, I believe?—Mr. STEVENS produced a photograph. Of course I had some objection to come to London to leave my business, but he said he had a telegram from the Treasury wishing to see me, and for the sake of justice he prevailed upon me to come.

Cross-examined by Dr. KENEALY.

Did you ever see LUNDGREN since 1854?—Many times.

In 1855?—1855.

Often seen him after?—Many times.

After 1855?—After 1855.

When was the last time you ever saw him?—I would not swear to any date, but I saw him many times at Bristol, and also at Cardiff.

Will you swear you ever saw him in 1855?—Yes.

Where?—At Bristol or Cardiff, I would not say which; but I saw him for years after.

Where?—At Cardiff and at Bristol.

Bristol is a large place. Where did you see him at Bristol?—I saw him at MARK WHITWELL'S and on the quay. I often had business at Bristol.

Will you swear to any time you ever saw him at WHITWELL'S, at Bristol?—During the time he was in MARK WHITWELL'S office I can swear I saw him several times.

You cannot swear to any?—I cannot swear to any date.

Can you swear to any occasion on which you saw him?—My memory does not serve me at the moment, but I saw him several times.

I suppose you cannot swear to any conversation you ever had with him at WHITWELL'S?—I had general conversations with him. I asked him how he did, and so forth.

Can you swear to anything?—Nothing particular.

Can you swear to anybody who ever was present when you and

MR. GEORGE RIMELL.*

he had anything like a meeting?—Nothing of any special nature that I can remember.

Do not talk of a special nature. Can you tell me of any human being that was ever present when you and he were talking together after 1854?—I cannot fix on any individual.

Could you tell me any particular place where you were that you can venture to say you ever met him after 1854? I do not talk of a large city like Bristol, I am talking of a street, or place, or house, or office?—I have seen him on the Broad Quay at Bristol, and Drawbridge, and several places in the neighbourhood where the ships were.

That is all you can tell us?—That is all I can tell you.

How long was he in your service?—I traced him in the cash-book from the 25th of November, 1854, to the 19th of February, 1855.

About four months?—Yes.

Were you shown a photograph by Mr. STEVENS?—I was shown one.

How many?—One.

Was that the one in the hat?—Yes.

Were you not shown the bald-headed photograph?—I was not shown that.

By anyone?—I saw it here when I came to London.

Where did you see it here?—In the Solicitors' Office in the Court here.

Did anyone show it to you?—I saw it on the table.

How many people were there when you saw it?—Several.

Was it put on the table for the purpose of looking at?—I cannot say.

Did you see other people looking at it; can you tell that?—I was giving my evidence; my evidence was being taken down, the carte was close to me, and I looked at it

Was there more than one on the table?—I cannot say.

* For his connection with JEAN LUIE, see the 'Introduction,' pages 288 and 293.

How many people were there at the time when you were there?—Perhaps a dozen.

Were they the Cardiff and Bristol people we have seen here yesterday?—I think they were.

Were they all looking at it?—No, I was only looking at it myself there.

Did you see the last Witness there, Mr. BUCKINGHAM?—I think I did.

Did you see him looking at it?—I did not. I do not remember seeing him looking at it.

Were you stating your evidence in the presence of all these other people?—What I said was very quietly to the handwriter.

I am not saying you said it any other way than quietly?—I was at the table there.

What I want to know is, were you mentioning it to him as if he could write it down from what you were saying?—No one heard what I said. No observations made that any one could hear what I said.

Did you whisper it to him?—To no one. My impression I kept to myself.

I want to know how he could take down if you were not talking to him?—The handwriter. He was taking down what I told him.

I want to know whether you told him your evidence in the presence of the other people?—The other people were sitting by the wall; I was sitting by the table.

Were you whispering it or were you speaking it as you are speaking to me?—I was speaking much quieter than I am talking now.

You were anxious that other people should not hear you?—I had no desire about it. I was merely telling him what I knew quietly.

Did you tell him in your natural voice?—Very quietly I was speaking. Just that he could hear me.

Is not your natural voice a quiet one?—No, I think not. (Laughter.)

About a dozen people from Cardiff were there?—I do not know whether they were all from Cardiff; there were about a dozen people.

When you gave your evidence to him, did you go and sit by the wall?—Yes, and walked about the room.

Then somebody else came up and gave his evidence in a quiet voice?—Just so.

Is that the way you went, one after the other?—I cannot say, there was only one gentleman I knew.

How long did you stay? Did you stay while the others were going up giving their evidence to this gentleman?—Walking about the room waiting to come into Court.

Which of the gentlemen there did you give your evidence to in that nice quiet way?—I do not see him here.

Look again; was it the venerable-looking one or the one near him?—He is not here.

PRISON DOCUMENTS RELATING TO JOHN LUNDGREN HANDED IN BY MR. HAWKINS.

PENAL RECORD OF CONVICTION OF JOHN LUNDGREW, CONVICTED AT CARDIFF, OCTOBER 17, 1867.

Return to accompany the Caption of a Convict on his removal to a Government Prison, and subsequent Transfers.

Names and Aliases.	Age.	Married or Single and number of children.	Trade or Occupation.	Crime (with particulars).	Date and Place of Committal.	Date and Place of Conviction.	Sentence.	Information as to previous Convictions and Character.	Name of Residence of Family or Next of Kin.	Read	Write.	Religion (any subsequent change to be noted here with dates, &c.)
John Lundgrew otherwise Charles Lundgrew	43 years	Widower	Seaman	Feloniously obtaining £20 with intent to defraud	16th Sept., 1867, at Cardiff	At Cardiff Michaelmas Quarter Sessions, 17th Oct., 1867.	Seven years' penal servitude	Convicted of fraud at Bristol, 1861—sentenced to 3 years' penal servitude; once tried and acquitted of fraud	Unknown	Yes	Yes	Lutheran Roman Catholic on reception, 28th Nov. 1867

DESCRIPTION.

Complexion.	Hair.	Eyes.	Height.	Description of Person	Peculiar Marks, &c., on Body or Limbs.
Fresh	Light Brown	Dark Blue	5 feet 7 inches	Stout	Moles right side of body: several moles in back; both little fingers crooked.

Signature of the Governor by whom the Prisoner is transferred to a Government Prison. } J. B. WOODS, Gaoler.

TRANSFERS FROM DATE OF COMMITTAL.

	Date.	Register Number while there.	Description of Confinement.	General Character and Conduct.	Progress at School.	Prison Trade.	
Received at Cardiff Prison ...	16th Sept., 1867	3229	Separate	Good	None		J. B. Woods, Gaoler
Removed to Millbank Prison ...	28th Nov., 1867	,,	,,	,,	,,		
Received at Millbank Prison ...	Do.	4097	S. C.	,,	Satisfactory	Tailor	J. B. W.
Removed to Chatham Prison } Received at Chatham Prison }	7th Aug., 1868	9797	P. W.	Forfeited nil	Good	(Tailor and Driver)	J. C. F.

SPECIAL REMARKS AS TO CONDUCT, HEALTH, &C.

Health and conduct good.—J. B. WOODS, Gaoler.

Millbank.	Wrote.	Recd.	Visit.
	29.5.68	Nil.	Nil.

Final Disposal.—Licensed from Chatham, 25th March, 1873.

No. 19788/25772 Destination, Folkestone (for Rue la Carabière, Liège, Belgium.)

(Order of Quarter Sessions, Oct. 17, 1867.—Committal of JOHN LUNDGREN, otherwise CHARLES LUNDGREN.)

COUNTY OF GLAMORGAN.

At the General Quarter Sessions of the Peace holden by adjournment at Cardiff in and for the County of Glamorgan, on Thursday, the 17th day of October, in the thirty-first year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, and in the year of our LORD, 1867, before certain Justices of our said Lady the QUEEN, assigned to preserve the Peace in the said County, and also hear and determine divers Felonies, Trespasses, and other Misdemeanours done and committed therein.

Whereas at this present Quarter Sessions of the Peace, JOHN LUNDGREN, otherwise called CHARLES LUNDGREN, is and stands convicted of Felony, having been before convicted of Felony. It is thereupon ordered and adjudged by this Court that the above-named Convict be kept in Penal Servitude in such place as Her Majesty, by the advice of Her Privy Council, shall think fit to direct and appoint, for the term of Seven Years.

By the Court,
THOMAS DALTON,
Clerk of the Peace.

MEDICAL HISTORY SHEET, AS TO JOHN LUNDGREN.

(To be kept by the Medical Officer, and forwarded with a Prisoner on his removal.)

The particulars required below must be entered within a week after the Prisoner's reception.

Convict's Name.	John Lundgren.	Age on Conviction, 43 years.	
Place of Birth.	Sweden.	Country.	Sweden.
Place of Abode.	Cardiff.	County.	Glamorgan.
Crime.	Obtaining £20 with intent to defraud.		
Sentence.	7 years P. S.		
Dates of	Committal.	16 September, 1867.	
	Conviction.	17 October, 1867.	
Number of former Sentences.	Penal Servitude.	One.	
	Shorter Sentences.	None.	
General Health previous to present imprisonment, and special maladies from which the Prisoner states he has suffered.		Good. Sailor.	

MARKS OF PERSON.—CICATRICES AFTER.

Small Pox.	Vaccination.	Syphilis.	Scrofula.	Ulcers.	Wounds and other Injuries.
——	Yes.	——	——	——	——

CONDITION ON FIRST RECEPTION INTO A GOVERNMENT PRISON.

Lungs.	Heart.	Other Organs.	Of Mind.	General Hea'th.
——	——	——	——	Good.

Signature of Assistant Medical Officer,
CHARLES HENRY MAYHEW.

PARTICULARS AT EACH CONVICT PRISON.

Name of Prison.	Register No. of the Prisoner.	ON RECEPTION.				DATES OF		Weight in Pounds minus cap or b'ts.	
		Physical condition.†	Morbid condition present.	For what labour most fit.	Height without boots.	Reception.	Removal or discharge.	On reception.	On removal.
Millbank ...	4097.	Muscular.	Hernia.	Any.	5 ft. 7 in.	28 . 11 . 67.	7 . 8 . 68.	154	135
Chatham ...	9797.					7 . 8 . 68.	25 . 3 . 73.		

† To be described as far as possible by one of the following terms:—1st. Stout and strong. 2nd. Fat. 3rd. Spare, but muscular. 4th. Spare and weak.

[The following is at the back of the above document:—]

MEDICAL HISTORY IN THE CONVICT PRISONS INFIRMARY.

Prison.	DATES OF		Diseases.	General Treatment and Observations.
	Admission.	Discharge.		
Chatham	29 . 1 . 69.	12 . 2 . 69.	Gelatio.	C. H. M.
	9 . 3 . 69.	2 . 4 . 69.	Gelatio.	C. H. M.

PENAL RECORD AS TO CHARLES LUNDGREN,

Convicted at Bristol, October 24, 1862.

Return to accompany the Caption of a Convict on his removal to a Convict Prison and subsequent transfers:

Name and aliases.....	Charles Lundgren	Date and place of committal ...	October 18, 1862, Bristol
Age	Forty-six years	Date and place of conviction...	October 24, 1862, Bristol
Single or married, and number of children.....	Married; three children	The sentence.....	Three years' penal servitude
Read and write	Both well	Name and residence of family or next of kin	Wife, Sarah Lundgren, 19, King-street, Queen-square, Bristol
Trade or occupation.....	Interpreter		
Crime, stating particulars	Stealing a Bill of Exchange for the payment of £248 2s. 3d., the property of Ernest Augustus Henelius, at Bristol, September 27, 1862	Religion.....	Church of England
		Health	Good

INFORMATION RELATIVE TO FORMER CONVICTIONS.

Whether previously Transported	...
Previous Convictions, stating particulars...	...
Summary or otherwise, stating particulars	...

PERIODS AND PLACES OF CONFINEMENT From Date of Committal to Removal to a Convict Prison, stating whether in Separation or Association.

Name of Gaol.	Description of Confinement.	Months.	Days.	Character and Conduct.
Her Majesty's Common Gaol, Bristol	Separate.	5	8	Has behaved well in gaol.

J. J. GARDNER,
Governor of H. M. Gaol, Bristol.

Date, March 26th, 1873.

PARTICULARS OF PERIODS OF CONFINEMENT, AND CONDUCT WHILE IN CONVICT PRISONS.

	Places and Periods passed while under Probation			General character and conduct	Progress at School.	Prison Trades.	Governor's signature.
Separation.	Millbank	M'ths. 3	Days. 12	Good.	Satisfactory.	Tailor.	W. D. B.
Public Works.	Portsmouth	21	3	Very good		Labourer	

[The following is at the back of the previous document :—]

Name ... ... CHARLES LUNDGREN.

Dates of Committal, Conviction, Reception, and Removal.

Committal	18th October, 1862
Conviction	24th October, 1862
Removed from	H. M. Gaol, Bristol
Date	March 26th, 1863

Received in Millbank Prison.

Date ... ... 26th March, 1863

Removed from Millbank Prison.

Date ... ... 8th July, 1863

Received in Portsmouth.

Date	8th July, 1863
Discharged	On license, No. 16242
Viâ Millbank	11th April, 1865 D. P. A. Society.

DESCRIPTION.

Complexion	Fresh
Hair	Brown
Eyes	Blue
Height	Five feet eight inches ¼
Description of person	Nose, ordinary; face, long; body moderate.

J. J. GARDNER,
Governor of H. M. Gaol, Bristol.

Date, March 26th, 1873.

Mr. WILLIAM HENRY MARTIN, sworn.

Examined by Mr. HAWKINS.

Do you live at Cardiff?—I do.

Are you a shipbroker there?—Shipbroker and steam towing agent.

Do you remember a person named LUNDGREN at Cardiff?—I do.

Do you know what his Christian name was?—I do not.

In whose service was he when you first knew him?—In Messrs. SULLY and STONE.

Mr. STONE, the last Witness?—Yes.

During the time he was in their service was your residence and office next door to theirs?—It was.

How long do you remember him? Do you remember him when he first went into their service?—I do.

Did you continue to see him and know him when he left?—I did.

Did you afterwards see him in the service of anybody else?—I remember him being with Messrs. CORY Brothers—CORY and Son I think it was at that time.

Mr. Justice MELLOR: Where was the firm?—In Cardiff.

Mr. HAWKINS: Do you remember the last date of your seeing him?—I think it was between 1856 and 1857.

Mr. Justice MELLOR: If it would not interrupt you, what I should like to know is this: what were the means of communication between you.

Mr. HAWKINS: I was going to put that as the very next question.

The LORD CHIEF JUSTICE: He said his office and residence was next door.

Mr. HAWKINS: I was going to add something, I believe, to that. Besides living next door were you yourself constantly in SULLY and STONE'S?—Frequently.

Did you see the man LUNDGREN there?—I have seen him there.

Now you have seen the man LUIE?—I saw the man who went by the name of LUNDGREN.

When did you see him?—I saw him yesterday morning.

Is that the man who sits there with the bald head (pointing to JEAN LUIE)?—That is him.

Is that the man you knew in the service of SULLY and STONE, and afterwards CORY Brothers & Company?—It is.

Cross-examined by Dr. KENEALY.

When were you first spoken to about it?—On Friday last.

By whom?—I saw a photograph in the possession of Dr. PRATT at Cardiff.

Did PRATT come to you about it?—I was passing by and saw Dr. PRATT standing by his door, and he asked me if I knew LUNDGREN.

Did he show you the photograph, and then ask you that?—He did.

Was the photograph with or without the hat?—With the hat.

Did you know it when PRATT showed it to you after that?—I saw a likeness, but I would not swear to the man by the likeness.

How long has PRATT been at Cardiff?—Some years.

How long were you talking to PRATT?—I do not suppose above a few minutes.

What was the next step you took in the matter?—Mr. STEVENS the Solicitor at Cardiff sent for me.

Did he say how he came to hear of you?—Knowing I had been in Cardiff for many years, and the situation I had of steamboat manager, it was very probable I should know all the foreign Clerks there.

Did he say anything about PRATT?—No.

Is Mr. STEVENS a lawyer employed by Lord BUTE?—I do not think he is. I know his lawyer, Mr. SHIRLEY.

How long has Mr. STEVENS been there?—I think about seventeen or eighteen years.

How long were you talking to Mr. STEVENS?—Some time, some ten minutes.

Did he show you any photographs?—He did.

How many?—He showed me one.

Is that the same class of photograph as PRATT had been showing you?—It was.

Did you recognise it during your conversation with STEVENS?—I saw a likeness, but as I told him I would not swear to it.

You were doubtful?—I was doubtful.

Did Mr. STEVENS write down your evidence?—No.

Write down what you said?—Nothing at all. He had great difficulty to get me to come.

When did you hear again from anybody?—He pressed me very much to come; it was some time before I made up my mind I would come.

Mr. STEVENS pressed you very much to come on Friday?—Saturday.

Saturday he pressed you very much?—Yes.

What was the pressure?—He said it was a public duty we owed to the country.

A public duty to do what?—To come and recognise LUNDGREN if we could.

And pressed you a bit upon it?—Not a great deal. He said it was my duty to do so. I did not want the journey this time of year.

Did he show you photographs then?—No.

Were you still doubtful on the Saturday?—I was until I saw him yesterday morning.

When did you arrive in town?—Twelve o'clock Sunday night.

Had you told Mr. STEVENS you would come?—Yes.

Do you know whether Mr. STEVENS telegraphed to town you were coming?—I do not know what he did.

Did he tell you so?—No, he did not.

You came on Sunday night, and then whom did you first see on Monday morning about the matter?—A party met us at the Great Western Railway Hotel.

Do you know who that party was?—No; I had not the pleasure of being introduced to him. I never saw him before.

Have you seen him about there?—He is something connected with Scotland Yard; he is very polite. (Laughter.)

You do not know whether he was Detective CLARKE, do you?—I do not know his name.

Have you not an idea that that is his name?—I do not think that was CLARKE. I think he is a different man.

You have seen CLARKE as well?—Yes.

Did this man bring you down to Westminster?—Yes.

Were you introduced into the private room?—I was taken into a private room. I was not introduced to anyone particularly.

Did they show you any photographs there?—There was a photograph on the table.

How many persons were there when you went in?—Twenty or thirty I should think.

Every one that came in, I suppose, looked at the photograph?—They did.

Did they only show you one?—Only one.

Was that the bald-headed photograph?—It was.

Did you give them your evidence at the table?—I did.

While all those other people were sitting round in the room?—Some standing, some sitting, and a great crowd there.

When you gave your evidence, did you retire back and another person came forward and give his evidence in the same way?—Just so.

After you had all inspected the bald-headed man, were you introduced into the Court?—I should tell you I identified him coming out of the cab before I came into the Court. I identified LUNDGREN as he stepped out of the cab in the presence of this gentleman.

The LORD CHIEF JUSTICE: Identified him as he did what?—As he came out of the cab. I saw his side face, and said, "It is him." The man said, "Who?" I said, "The man who goes by the name of LUNDGREN."

Dr. KENEALY: Where was it?—Standing in the street.

Was he standing expecting him?—Not that I am aware of.

Not you; I do not say anything against you; was he standing outside Westminster Hall entrance?—I do not know the entrance.

Were you and he standing together at the same entrance?—Yes.

How long were you standing?—About five minutes before the cab came up, waiting to come in.

Did you see the man was in custody when he came in the cab?—I saw two parties with him. I do not know who they were or what they were.

Have you any doubt he was in custody?—I should rather think he was.

I should think so too. Had this man told you LUIE was in custody?—No.

You knew it beforehand?—I knew it beforehand.

When you saw him coming out of the cab you said "That is he?"—Yes.

Mr. Justice MELLOR: Have you any doubt he is the same man?—None, my lord.

Dr. KENEALY: We got no notice of this gentleman either. They clearly must have had some intimation he was coming. He was in London yesterday morning, and, as he says, identified LUIE very early.

Mr. Justice MELLOR: I think you ought to have had it as soon as he had seen the Witness, and could have identified him. I think it should have been given.

Dr. KENEALY: Your lordship sees the importance of the date, 1854.

Mr. Justice MELLOR: I quite agree.

GEORGE WILLIAMS, sworn.

Examined by Mr. Serjeant PARRY.

Are you a sail-maker in Cardiff?—I am.

Do you remember in 1867 seeing anyone who was enquiring for Messrs. PARRY'S offices?—I remember it well.

Have you seen that person since?—Never since.

Never since do you say? just understand my question. Have you seen him since then, since you have been up in town now?—I saw him yesterday.

Never before yesterday?—Never before yesterday.

Is that the person you saw (pointing to JEAN LUIE)?—Yes.

Did you direct him to Messrs. PARRY'S offices?—I did.

Did you converse with him when you directed him?—I did.

What was he, what did he represent himself as?—He represented himself to be a Captain of a ship then arrived in Penarth Roads.

I believe he did not tell you his name?—No, he did not.

You did not know his name at that time?—I did not know.

Are you quite sure he is the same man?—There is not the slightest doubt.

Cross-examined by Dr. KENEALY.

You never saw him before or since?—Only yesterday.

Who first talked to you about it in Cardiff?—I was sent for by Mr. STEVENS, and saw a likeness at Messrs. CORRY Brothers' office.

Mr. Justice MELLOR: As I understand you it was in 1867?—Yes.

Dr. KENEALY: Did you remember the likeness the moment you saw it?—I did.

How long were you talking to the man in 1867?—I suppose about a quarter of an hour.

Do you remember how he was dressed?—He had a glazed cap on.

Sailors generally have that. Is that all you remember about him?—He had a short suit, I think—I don't know exactly the colour. I think it was blue.

Like a sailor's coat? Do you remember it, or do you merely fancy it because he said he was a sailor?—I saw it.

You have remembered it ever since, no doubt?—I suppose I have.

How long were you talking to Mr. STEVENS?—About five minutes, I suppose.

Did Mr. STEVENS produce any photographs?—He did.

When did you see him?—On Saturday.

How many photographs did Mr. STEVENS produce?—He showed me one. I said I did not require to see it, because I had seen one the previous day.

How long had he been talking to you when he showed you the photographs?—Mr. STEVENS?

Yes.—About two minutes, I suppose.

Upon the subject of this matter?—Upon the subject.

When did you come to town?—On Saturday night, by the mail train; I arrived here on Sunday morning.

Who did you first see about the matter?—I never saw anyone until yesterday morning about ten o'clock.

Did you come to the 'Great Western Hotel,' like the others? How many of you are staying at the 'Great Western Hotel'?—About five or six.

No more?—That is all I know. There may have been more there for aught I know.

Pleasant quarters there?—Very.

Who did you first see at the 'Great Western Hotel' about this business?—I saw no one at the 'Great Western Hotel.'

Who did you first see in town about this business?—I went to the Solicitors' Office, under this roof somewhere.

You went straight to the Office?—Yes.

Do you see any of those gentlemen here?—I see one.

Which one?—That gentleman there at the table.

Was that the gentleman you gave your evidence to (pointing to Mr. BOWKER)?—I believe so.

The white-headed one, you mean?—No, that is not the gentleman; it is another one with white hair.

Is it not possible you have made a mistake?—Another gentleman with a white head.

Which of them was it? You remember a man after seven years?—Neither of them. That gentleman was in the room at the time.

I asked you as to the one you gave your evidence to, and you told me he was at the end of the table?—He is not there. I thought it was him.

Was it a white-headed one? You said it was?—The other had a white head also.

Do you see the one sitting down at the end of this Bench?—That is not the gentleman.

How is it that you made that mistake?—They were both white heads, that is the reason.

About how many people were in the room when you were giving your evidence to the white-headed man?—About twenty.

Then after you gave your evidence, did you go and sit down by the wall, like the rest of them?—I went into the street to have a look round.

Did you see the photograph that was lying on the table?—No.

Perhaps you are making a little bit of a mistake about that?—No, I do not.

Was there not a photograph lying on the table as all the people came in?—There was. I saw it in the hands of several, but I did not look at it.

You had seen the photograph going about from hand to hand among those twenty people?—I did.

Can you tell me how many lawyers were there? I mean persons sitting at the table taking down the evidence. Was there more than one?—Yes.

Surely—it was only yesterday?—Four or five, or there may have been seven.

Seven lawyers taking down the evidence?—I can't say which.

Dr. KENEALY: We got no notice of that Witness either, my lord.

The LORD CHIEF JUSTICE: I do not think it was worth while to have given you notice of that.

HERMAN THEODORE TRANA, sworn.

Examined by Mr. HAWKINS.

Are you in the service of MONTGOMERY and Company, provision-merchants, in Liverpool?—Yes.

Were you in the year 1850 and 1851 in the service of Messrs. JOSEPH HEALD and Co., of Newcastle-upon-Tyne?—Yes.

Do you remember in one of those years (if you remember which one you will tell me) going on board a vessel called the 'Isabella'?—Yes.

Mr. Justice MELLOR: At Newcastle-on-Tyne?—No, at North Shields.

Mr. HAWKINS: HEALD and Co. were brokers, I think?—Yes.

Was it in the course of your employment with them you went on board the vessel?—Yes.

Was that to solicit employment of the ship?—Yes.

Who did you see on board?—I saw the Captain.

Did he give you his name?—No, he did not, but I knew his name before. The vessel was reported.

What was his name?—CARL LUNDGREN.

The LORD CHIEF JUSTICE: You say you had known him before?—I made his acquaintance then. I had not seen him before.

How did you know his name?—Because it was the "'Isabella,' Captain LUNDGREN," and I went on board.

Mr. HAWKINS: I believe you did not get the ship?—No.

I believe you saw no more of Captain LUNDGREN for a year or two?—I do not remember that. I saw him, perhaps.

Did you afterwards see him anywhere else?—Yes. I saw him in Hull.

What was he doing when you saw him at Hull?—He was Clerk with JOHN LUNDGREN and Company.

There was a firm, JOHN LUNDGREN and Company, at that time?—Yes.

What were JOHN LUNDGREN and Company at Hull?—They were shipbrokers.

What year was that, do you remember?—I think between 1853 and 1854.

Were you in the service of anybody at Hull?—Yes; I was in the service of JOHN LUNDGREN and Co.

The LORD CHIEF JUSTICE: As Clerk?—As Correspondent.

Mr. HAWKINS: Do you remember in the period that you were at JOHN LUNDGREN and Co.'s, the name of any vessels being mentioned to you?—No, I do not remember.

Do you remember anything that occurred with Messrs. HEALD?—Yes, not at that time.

When was that?—Then I had left JOHN LUNDGREN and Co.

The LORD CHIEF JUSTICE: Can you give us the date of when you left JOHN LUNDGREN and Co.?—That I cannot recollect.

Mr. HAWKINS: Do you remember yourself, after you had left JOHN LUNDGREN and Co., anything occurring with reference to Mr. HEALD of Newcastle?—Yes; I did business on my own account.

Where?—At Hull.

Did you in the course of your own business at Hull have communication with LUNDGREN?—Yes, I had.

Mr. Justice MELLOR: Which LUNDGREN?

Mr. HAWKINS: CARL LUNDGREN, the Captain?—Yes.

Do you remember anything occurring with reference to HEALD of Newcastle, which made you have a conversation with CARL LUNDGREN?—Yes.

Will you tell us what that was?—He gave me vessels, at least, he gave me names of vessels that he had chartered.

The LORD CHIEF JUSTICE: Just repeat what you said?—During that time CARL LUNDGREN chartered vessels. He went out to captains and got their signatures.

Who was he acting for, as far as you know?—For me.

Mr. Justice MELLOR: Chartering ships?—Yes.

The LORD CHIEF JUSTICE: Did he employ you as broker?—No, I paid him for his trouble.

What I understand is that you were then acting as shipbroker for yourself?—Exactly.

Let me see if I understand you. CARL LUNDGREN used to go out for you, employed by you, to get the chartering of the vessels that came in there?—Exactly.

Mr. HAWKINS: Will you just continue. You were telling us about it?—After that I was absent for about a fortnight or so.

The LORD CHIEF JUSTICE: You said something as my brother LUSH understood about his having given you the names of ships?—Exactly.

Mr. Justice LUSH: He gave you the names of some ships?—Yes.

Mr. Justice MELLOR: And used to go out to solicit their business for you?—Yes.

Mr. HAWKINS: Can you tell me the name of any ship that he gave you?—No, I do not remember, but I think there was one vessel; during my absence he acted for me.

The LORD CHIEF JUSTICE: You were absent during a fortnight?—About so; I cannot tell exactly; eight days or a fortnight.

Dr. KENEALY: I suppose we are not going to have what took place in his absence?

The LORD CHIEF JUSTICE: As I understand it is merely leading up to something that took place when he came back.

Mr. HAWKINS: When you came back, did you have any communication with him about what had happened in your absence?—I think I got a letter from JOSEPH HEALD and Company asking me——

Dr. KENEALY: We cannot have this.

The LORD CHIEF JUSTICE: Had you any conversation about it?—Yes.

You can tell us what passed between you and him?—Sunday morning I was ordered to go over. I was not in Hull. I was about Newcastle. I was ordered to go to Hull to see what it was.

Tell us what passed between you and LUNDGREN about anything that happened in your absence?—He chartered vessels; he sent vessels to JOSEPH HEALD and Company.

Had he chartered vessels?—Yes, he had the signatures of the captains.

Mr. HAWKINS: Introduced vessels, as I understand?—Quite so; he introduced vessels to JOSEPH HEALD and Company.

He got vessels for Joseph HEALD and Company instead of bringing them to you?—During my absence CARL LUNDGREN was in Hull; he sent in the charter parties to buy and carry through the charter parties; he sent to JOSEPH HEALD and Company to get the vessels chartered.

For you?—Yes.

The LORD CHIEF JUSTICE: He had introduced the ships on your behalf to JOSEPH HEALD and Co.?—Yes.

Mr. HAWKINS: At that time was there any complaint made to you by HEALD?—Yes, there was; that was the reason I returned so quick back to Hull.

Did you mention to CARL LUNDGREN the complaint that HEALD had made to you?—Exactly so.

What was that complaint?—I complained "I think you have swindled me." (A laugh).

In what way?—There was no vessel to be seen.

The LORD CHIEF JUSTICE: Got them to charter a vessel that was not there?—That was not in existence.

Mr. HAWKINS: Do you remember a vessel called the 'Don Juan'?—Yes; but I have not seen the vessel. There was a vessel called the 'Don Juan'; that I remember.

The LORD CHIEF JUSTICE: HEALD and Company complained to the Witness that the broker swindled them by getting them to charter an imaginary vessel. Was it HEALD and Company that complained of their being swindled?—Exactly.

When HEALD and Company complained of their having been swindled, did you have any conversation with LUNDGREN about it?—Just before that, I went to Hull for HEALD to look after LUNDGREN, and found him in his bed when I came.

Mr. Justice MELLOR: What did you say to him?—I said, "I think you have swindled me."

Mr. HAWKINS: Will you tell me what you said to him when you found him in bed?—I said, "I think you have swindled me; how is this?" I do not remember more.

Dr. KENEALY: Are we to have all these things?

The LORD CHIEF JUSTICE: We have some doubt whether these conversations can be admitted. The Witness says, "I had transactions with him, and he was in my employ." If this is leading up to anything to discharging him from his employ or anything of that sort that is one thing. Now you are going into the details of some supposed swindling transaction which merely goes to the credit of the Witness.

Mr. HAWKINS: The moment your lordship suggests there is a doubt about it, I would rather withdraw the question.

Mr. Justice LUSH: The material part is the date.

Mr. HAWKINS: I will go at once to that. Did you shortly after that cease to have anything to do with CARL LUNDGREN?—I had nothing to do with him after that.

Mr. Justice MELLOR: The importance is to fix the year when the particular transaction took place: to fix the time. That is the only material matter.

Mr. HAWKINS: Can you fix the particular time or not?—No, I cannot: between 1853 and 1854.

Mr. Justice MELLOR: I want to see if he can go nearer than that.

The WITNESS: No, I cannot.

The LORD CHIEF JUSTICE: Have you no books of that period?—No, nothing.

Mr. HAWKINS: I shall be obliged to fix dates by other matters. Did he remain long in Hull after that?—That I do not know.

You cannot say that?—I cannot say that.

Mr. Justice MELLOR: After you had seen him in bed and spoken to him on the subject of HEALD & Co., did you ever see him again that you know of?—I may have done so; I cannot swear to it. I cannot remember.

Mr. HAWKINS: Were you ever after that at Bristol?—Yes, I was.

Do you remember about what year it was?—I cannot tell exactly. I think 1862 or 1863.

Do you remember what he was doing in Bristol at that time?—I met him on board a Russian vessel, the 'Olhenloos.'

Do you remember what he was doing?—No, he was backwards and forwards.

Mr. Justice LUSH: Not employed on board the vessel?—No, not that I know of.

Mr. HAWKINS: How long did you remain in Bristol, do you remember?—I remained there about three or four weeks.

You say he was backwards and forwards. About how often did you see him during that period?—About every other day. Sometimes every day; sometimes he came down a couple of times,

sometimes he only came to ask the Captain if he wanted anything.

Mr. Justice LUSH: Did you see him more than once during that time?—I saw him about every other day.

Mr. Justice MELLOR: During the fortnight or three weeks you remained at Bristol?—I was in Bristol a fortnight or three weeks, and he went on board backwards and forwards.

Was it during that period you saw him every other day?—Yes, about that.

The LORD CHIEF JUSTICE: What was he doing?—I cannot tell you.

Was he soliciting orders?—I do not know. He went on errands for the Captain.

Mr. HAWKINS: Now have you seen the man LUIE (pointing to him)?—Yes.

When did you see him?—His portrait yesterday.

When did you see the man recently?—Yesterday morning.

Did you know him?—Yes.

Who is he?—He is CARL LUNDGREN, belonging to Gothenburg.

Dr. KENEALY: We have got no notice about this man. I do not know whether your lordship would prefer my beginning to cross-examine him now, or giving me an opportunity of continuing the cross-examination, or deferring it altogether. This man says he is a shipbroker; he has not a single book; he has been moving about from post to pillar and from pillar to post. We know nothing about it.

Mr. HAWKINS: There has been notice given immediately after this gentleman had seen LUIE. I have a copy of the notice in my hand.

Mr. A. K. STEPHENSON: The last man was accidentally omitted.

Mr. HAWKINS: This is the notice.

Mr. Justice LUSH: When was it given?

Mr. A. K. STEPHENSON: Yesterday morning.

Mr. HAWKINS: After the Witness had identified him.

Dr. KENEALY: Assuming that was given, and I take Mr. STEPHENSON'S word although I have not seen it, yet yesterday morning would not give us any opportunity of making inquiries about a man who was travelling from Hull to Liverpool and Bristol, and to somewhere else.

The LORD CHIEF JUSTICE: As I understand, he was not carrying on business at Liverpool; only on a visit.

The WITNESS: Bristol.

Dr. KENEALY: He was at Liverpool, Newcastle-on-Tyne, and Hull.

Mr. Justice LUSH: He is now in service at Liverpool.

Dr. KENEALY: And he has not a single book.

The LORD CHIEF JUSTICE: You had better ask any question you desire to ask now.

Cross-examined by Dr. KENEALY.

What has become of your books?—That I do not know; I do not remember.

Did you ever keep any books?—Yes, only noting down the vessels I chartered.

Did you keep books or did you not?—Yes.

When you say you were acting on your own account?—Yes.

What has become of them?—I do not know.

Now will you pledge your oath to any year you ever spoke to LUNDGREN?—Yes, 1853 or 1854.

That is not what I want. When, upon your oath, did you ever speak to LUNDGREN?—The first?

Yes.—1850 or 1851, in North Shields.

Was anybody ever present when you spoke to him?—No, he was on board ship.

The LORD CHIEF JUSTICE: That is the first time?—Yes.

Dr. KENEALY: Where was the ship from?—The vessel belonged to Gothenburg; where it came from then I do not know.

Can you tell me the name of anybody that was on board that vessel?—No, I cannot tell you.

How long were you on board, as you say?—Perhaps ten minutes, and so on. I only offered my services.

Did you ever have any dealings whatever with that vessel?—No, never.

That was in 1850?—I cannot say whether 1850 or 1851.

That was the first occasion on which you say you saw him?—Yes.

When was the second?—The second occasion was 1853 or 1854.

It is very odd that it is 1850 or 1851, and 1853 or 1854. Cannot you give me anything specific?—No, I cannot.

What were you doing at Hull at that time that you say you saw him?—I was in JOHN LUNDGREN and Company's office.

How long were you there?—I cannot say; I think four or five months. I cannot say as to that.

Surely you can tell me in what year you were in JOHN LUNDGREN and Company's office?—About 1853 or 1854.

Cannot you tell me which year?—I think it was 1854, but I am not sure.

How did you happen to see LUNDGREN then?—Because he was a Clerk there.

Was he in the same office as you?—Yes.

Mr. Justice MELLOR: You were both in the same service?—Yes, with JOHN LUNDGREN and Company.

Dr. KENEALY: Did you say you were in the same office?—In the same room do you mean?

Sitting in the same room?—No; I had an inner room; he was Water Clerk.

He was Water Clerk in the inner room?—No.

Who was in the inner room?—I was in the inner room.

You were in the inner room, and he was a Water Clerk?—Yes.

Did his business bring him into communication at all with you?—With the firm?

No: with you?—Then?

Yes.—No.

When did you do business on your own account at Hull?—It was about five or six months after that.

The LORD CHIEF JUSTICE: After you left LUNDGREN?—Of course, after I left LUNDGREN.

Mr. Justice MELLOR: Do you mean five or six months after you left LUNDGREN, or were you in LUNDGREN'S service five or six months?—I think I was about four or five or six months.

The LORD CHIEF JUSTICE: Five or six months what?—In JOHN LUNDGREN and Company's office.

Mr. Justice MELLOR: How soon after you left their office was it you began on your own account?—About a month or so afterwards.

Dr. KENEALY: How long did you carry on business on your own account at Hull?—1856, I think.

From 1854 to 1856 you say?—Yes, about so, I am not sure; it is long since; I cannot recollect.

Can you tell me where in Hull you carried on business on your own account?—At home, in the house where I lived.

You had not a place of business?—No; I only did my business there chartering vessels; I could do that as well there as anywhere else.

Was it your house in Hull or out of Hull?—In Hull.

Can you tell me the name of the street it was in?—Close to the 'Minerva Hotel.' I cannot tell the name of the street.

You cannot tell me the name of the street in Hull where you carried on business till 1856?—Where the landing stage is, close to Queen Street, where the steamers go.

Do you remember the name of the landlord?—I do not remember the landlord's name.

The LORD CHIEF JUSTICE: You do not remember the street?—Queen Street, I think; I am not sure of that.

Dr. KENEALY: My lord wants to know the name of the street where you carried on business for two years?—The street? I do not know the name of the street—opposite where the steamers are.

Do you remember the number of the house?—No, I do not know what number.

Nor the landlord's name?—I do not remember.

Mr. Justice MELLOR: Did you occupy the whole of the house?—A room.

Who else occupied any other part of the house? Do you remember the name of anybody who occupied any part of the house besides yourself?—The parlour and bed-room I had.

Who occupied the others?—I do not know.

Dr. KENEALY: Was it a lodging-house?—Yes.

You occupied only one room?—Yes.

Was that a bed-room?—Yes.

You made that your office?—Yes.

The LORD CHIEF JUSTICE: A parlour and bed-room he said, unless he made that serve as both.

Dr. KENEALY: Did you occupy one room or two rooms?—Two rooms, I think.

You think! Come, come; you must remember whether it was one or two rooms?—I do not remember.

You must remember whether it was one room or two rooms where you say you were living for two years?—One bed-room, and I could go into the parlour. I had access to the parlour.

Was that parlour for the general use of the lodgers?—Yes.

You paid nothing for it?—No.

It was for the general use of the lodgers?—Yes.

In the parlour you transacted your business?—Yes.

You were a shipbroker, you say?—Yes.

Can you tell me any respectable firm in Hull that you carried on business with as shipbroker on your own account?—I do not understand you.

I will try and make it clear. Can you tell me the name of any respectable merchant's house in Hull that you carried on business with as shipbroker?—I did not do any business in Hull: chartered coal business, and it was in Newcastle.

I thought you said it was in Hull you were carrying on business on your own account for two years?—Yes.

Can you tell me the name of any respectable firm you had any mercantile transactions with in the course of two years?—I had no transactions at all with them; but I know many respectable firms: HANS MARKE and Company, GOTFLOOD and Company.

Did you have mercantile transactions with the persons you named?—No.

I want you to give me the names of any persons you did have commercial transactions with?—I did only chartering in coal; consequently I had no transactions with Hull. All my transactions were with Newcastle-on-Tyne.

What on earth were you doing in Hull for two years if you had no transactions there?—I chartered vessels to load in Newcastle.

Can you tell me the name of any gentleman in Hull for whom you chartered vessels?—I did not charter any vessels in Hull. I chartered in Newcastle.

Did you remove from Hull to carry on business at Newcastle?—No. I corresponded with Newcastle, and if I got the vessel and got the Captain's signature I sent it on to Newcastle to get it chartered. She went from Hull to Newcastle to load.

Can you tell me the name of any respectable firm in Newcastle you transacted business with or for?—Joseph Heald and Co.

Anybody else?—Not on my own account.

I am talking when you were in business?—Joseph Heald is the only one.

That is the only one you remember?—Yes.

Had you many transactions with him?—Yes.

Many?—Yes.

About how many in the course of these two years?—I do not know.

Is that the only one whose name you remember?—Yes.

Does he carry on business at Newcastle now?—Yes.

After your two years at Hull, what became of you?—I went to Liverpool in 1856. I went to a firm called D'Eme, Gaurine and Company, Limited, Liverpool, as French Correspondent.

When were you in their employment?—In 1856.

Were you a Clerk in the office?—Yes.

How long were you in their office?—Between four and five years.

Writing French letters for them?—Yes.

After you left them what became of you?—After that I went to Pilkington Brothers and Company.

Do they carry on their business in Liverpool?—Not now.

They did?—They did.

The Lord Chief Justice: You were Clerk to them?—Yes.

Dr. Kenealy: Are Guarine and Company carrying on business in Liverpool?—No; the firm are gone.

And Pilkington and Company are gone?—Yes.

How long were you with Pilkington and Company?—Nearly five years, I think.

That was down to what year?—I think 1864 or 1865.

Then what became of you?

The Lord Chief Justice: You are a foreigner yourself?—I am a Swede.

Dr. Kenealy: Then what became of you?—With J. C. Hansen.

Are Hansen and Company carrying on their business now in Liverpool?—They are.

The Lord Chief Justice: It is a single name. Is it Hansen and Company, or Hansen only?—About three or four days since they altered the firm to Hansen and Company. It was J. C Hansen when I was there.

Mr. Justice Lush: It is now Hansen and Co.?—It is now Hansen and Co.

How long were you with Hansen?—Three or four years.

Dr. Kenealy: Three or four years with Hansen?—About, I cannot say.

Was it three or two?—Three, I think.

Three years?—Yes, about so, I cannot recollect.

After that what became of you?—After that I have been with Moose and Co.

Mr. Justice Mellor: At Liverpool?—Yes.

Dr. Kenealy: Are they carrying on their business still?—Yes.

How long were you with Moose and Co.?—I cannot tell. Two years, I think. I do not recollect that.

You are not sure?—I do not recollect that. We were in partnership.

After that what became of you?—I am now with Montgomery and Co.

How long have you been there?—Since last year, a little more than a year, a year and some months.

Can you tell me how you got introduced into this Case?—Yes; last Thursday I got a letter from the Swedish and Norwegian Consulate, at least from the Secretary, that I should make my appearance in the office.

The Lord Chief Justice: To the Consulate?—Yes. I did not know what he wanted to see me about; I did not know what it was, so I did not go till last Saturday morning.

Dr. Kenealy: Is that in Liverpool?—That is in Liverpool.

You went last Saturday morning?—I went last Saturday morning.

Can you give any idea how they found out you could give information to them on this matter?—I think Mr. Conradi, who is the Secretary. I do not know who informed him about it.

Did you not ask him?—No, he asked if I knew anything about Carl Lundgren. I said yes, I knew him.

Did you not ask him how he happened to send for you?—I did not ask him that. He asked me to go to Mr. Bateson, a Solicitor, where the photographs were.

How many photographs were there?—Two.

One with a hat?—Yes.

What was the name?—Conradi.

The Lord Chief Justice: Conradi asked you?—Yes; he asked me to go to Mr. Bateson.

There you saw the photographs?—There I saw the photographs.

Dr. Kenealy: Two photographs?—Yes.

One with a hat?—Yes.

And the other without?—Yes.

How long did you stay at Bateson's?—I stayed perhaps five minutes or ten minutes.

When did you come to London?—I left Liverpool Sunday at a quarter to four in the afternoon.

Got to London, of course, Sunday night?—Yes.

Yesterday, did you see any more lawyers about it?—No, I have not seen one.

Were you in any room in this place yesterday?—Yes; I was all day here.

In a room?—Upstairs, here.

Up in the gallery?—Yes.

You heard all that was sworn yesterday?—I was up there. I did not hear anything: I heard talk, but I did not hear what was said. I cannot hear up there.

You cannot hear up in the gallery?—I was standing behind people. I could not hear anything, and I could not understand. (Laughter).

You were standing behind the whole day, and never heard a word?—I heard many words said, but I could not make them out.

Did nobody show you any photographs in town, here in London?—I do not remember that.

You only came on Sunday night?—Yes.

Did anybody show you any photographs after you came to London?—I do not remember that.

Try and remember; it was only yesterday?—Yes; I saw in a room here——

Who took you into the room?—I do not know. A gentleman asked me to come in, and all the others were there.

Did they show you any photographs there?—I think they did; I am not sure of it.

Now you told me about 1850 and 1851, and also 1853 and 1854. Will you pledge your oath to any year after 1854 that you spoke to Carl Lundgren?—No, that I cannot.

Did they write down your evidence yesterday in that room where the photographs were?—Yes.

Can you tell me who wrote it down?—I do not know the gentleman.

Would you know the gentleman if you saw him again? You will not find him up there (pointing to the gallery). Look at this row of gentlemen here; do you recognise any of them as writing down your evidence yesterday?—I do not think it was written down here, because on Saturday Mr. Bateson's clerk took it.

That may be a very good reason. I am asking you what took place yesterday. Are you prepared to swear any gentleman wrote down in your presence yesterday your evidence in the room where the photographs were?—I do not think so.

Did you see any of those four gentlemen there?—Four gentlemen?

The white-haired one, was he there?—No, I did not see him.

Did you see the one behind the white-haired one? It is only yesterday?—I do not think so.

You remember people after twenty years. This is yesterday. Did you see any of those four, five, or six gentlemen—I see six of them now—any of those six gentlemen in that room yesterday where the photographs were?—Yes, one of the gentlemen.

The one at the end; he was one of them?—I think so.

Do you not recognise any of the others?—I cannot see very well.

Was there a number of people in the room at the time?—Plenty.

Were they sitting round the walls?—Yes; and standing.

Then they came up one after the other to the table?—No; I did not see that. They were not sitting down; they were standing; there were so many in the room there was no room to sit down.

Did you see one of those gentlemen writing at the table?—Yes (pointing to one of the Solicitors to the Treasury).

Did you see more photographs on the table?—No; I think I did not see. Perhaps there may be.

It is only yesterday?—Yes; I do not think I saw it.

Examined by the Court.

The Lord Chief Justice: When was it you say you saw Carl Lundgren on board the Russian ship?—Between 1862 and 1863; one of those two years.

One or other of those two years?—Because I came from Liverpool and was in the employ of Pilkington Brothers, and was sent to Bristol to try to charter two vessels, one called 'Neild' and the other 'Olhenloos.'

On that occasion you were at Bristol about this business?—Yes.

Then it was you saw Lundgren on board this Russian vessel?—Yes.

Mr. Justice Mellor: When did you see him first?—Between 1850 and 1851.

When did you see the Witness Luie here in this place?—Yesterday morning.

Was it before the business began?—Yes; it was before the business began.

Are you quite sure that you knew him again?—Yes.

To be the same man?—Yes; that I can swear.

That you have been speaking to?—Yes; I am sure of that. I can swear to it.

June 17/67

Mrs Pittendreigh

Madam I received your note and should be very sorry if you could not oblige me what you promised I was sorry I was in town yesterday when you called. But if was unnavoidable please send me all Ohlen information If you can and if you are short of money I will send it by post I hope to hear from you again

Yours truly

R C Tichborne

FACSIMILE OF FORGED PITTENDREIGH LETTER, JUNE 17TH, 1867.

JOHN LUNDGREN, sworn.

Examined by Mr. Serjeant PARRY.

You now reside at 39, Horseferry-road, Westminster?—Yes.

Are you now in the employment of Messrs. BOWRING and JAMESON, of Fenchurch-street?—Yes.

What are those gentlemen?—They are American merchants and shipbrokers.

Are you a Managing Clerk there?—I am manager of the foreign establishment.

I believe you are a native of Finland?—I am.

How long have you been in this country?—I have been in this country since 1848.

Did you at any time carry on business as a broker yourself at Hull?—Yes.

During what period was that?—My business in Hull was from 1851 to 1857.

The LORD CHIEF JUSTICE: As what?—As shipbroker and commission merchant.

Mr. Serjeant PARRY: Did you know Mr. TRANA, the last Witness, when you were so carrying on your business at Hull?—Yes, he was engaged for me.

What as?—As a Foreign Correspondent—Clerk.

During what time?—From 1853 to 1854.

Do you remember up to what month in the year 1854 he was engaged for you, or about?—I believe he was engaged, to the best of my belief, in the middle of 1854. It would be June, I dare say.

Had you in your employment at that time a person of the name of LUNDGREN, the same name as yourself?—Yes. I had a Swede in my employ.

What name did you know him by?—He signed his name "C. P. LUNDGREN." We called him CHARLES LUNDGREN.

Is he any relation of yours?—No; he is a Swede and I am a Fin.

Mr. Justice LUSH: Is the name spelt alike?—Exactly so.

Mr. Justice MELLOR: He was called CARL?—Yes, or CHARLES; it comes to the same.

Mr. Serjeant PARRY: How long was this LUNDGREN in your employment?—He was with me about the same time as TRANA.

From 1853 to the middle of 1854?—Yes.

Have you seen him since?—I have seen him last night in the Court.

I believe just as the Court broke up?—Yes.

Is that the man (pointing to JEAN LUIE)?—The very identical man.

Did you speak to him?—Yes, I spoke to him.

In what language?—I spoke to him in English.

What did you say to him?—I said "How do you do."

What did he say?—"Even thou knowest me!"

How was he employed in your service?—He was employed in my service as a Water Clerk, or Boarding Clerk to go on board ships.

Could you tell us what time in 1853?—It was in the spring, or the beginning of 1853.

Was a gentleman of the name of SAMUEL SHIELDS your Managing Clerk at that time?—Yes, he was managing man in the office, jointly partner with me.

Cross-examined by Dr. KENEALY.

When were you first spoken to about this matter?—I heard from friends of mine that my name was mixed up as young LUNDGREN was in the Case, and I would find the identical young LUNDGREN or something like that.

When was that?—Last week, Thursday or Friday.

When did you come to the Solicitors for the Prosecution about it, or did they come to you about it?—No, I wrote to them.

When?—On Friday.

Dr. KENEALY: We did not get notice of this Witness, my lords, until about three minutes before he was put into the box.

Mr. Serjeant PARRY: I am told we only received the letter yesterday here in Court, and I saw this gentleman myself at the rising of the Court.

Dr. KENEALY: But you say you wrote on Friday?—Yes, but I did not post the letter myself, and it was very late I wrote it.

When will you swear that LUNDGREN entered your employ?—He entered my employ in the spring of 1853.

How long did he remain in your service?—Till 1854, just before the Crimean War, I think, began; the War began in 1854, and he was in my service until the middle of 1854.

Then he was in your service more than twelve months?—Yes, about that.

How many people had you in your service?—I had a great many others, but they are not here now.

At that time?—Yes, at that time.

What makes you remember so well that he entered your service in the spring of 1853; it is twenty years ago?—What makes me remember it so well?

Yes, that he entered it in the spring?—Oh, I remember beyond that time.

I hope you do; but you had a great many Clerks in your employ?—Yes.

Do you remember always at the end of twenty years what time of the year each entered your service?—No, but peculiar men in my engagements, I remember them by their peculiarities.

Have you any memorandums at all to refresh your memory?—No, not memorandums left, but I could get them.

The LORD CHIEF JUSTICE: You could get them, do you say?—I dare say I could get them.

Dr. KENEALY: Did you keep books containing the names of Clerks and the salaries you paid them?—No, not now.

Of course not now. I am talking of 1853?—No, I do not know where those books are now.

You do not know where they are?—Not those books I had in 1853.

What has become of them?—I suppose they are left somewhere in some Court or other. I failed in 1857, and I suppose they are in the Court.

Oh, you failed in 1857, and you suppose the books are in the Court; at Liverpool is that?

The LORD CHIEF JUSTICE: No, Hull.

Dr. KENEALY: So you have had no means of refreshing your memory as to the dates of your Clerks since 1857?—Not the dates.

The LORD CHIEF JUSTICE: Would those books contain the wages paid to your Clerks from time to time?—Of course they would.

Dr. KENEALY: And are the names of all your Clerks in those books?—Yes.

You say that your friends began to talk to you some time last week about it, and then you wrote a letter to the lawyers for the Prosecution. When did you see the lawyers for the Prosecution?—The lawyers I saw last night here.

Did you ever see LUNDGREN after he left you, as you say, in 1854?—Yes, I saw him in 1862.

Where?—I travelled from London, viâ Bristol, to Ireland. I was going to see the Lakes of Killarney, and I saw him in Bristol.

At Bristol in 1862; what part of the year?—Well, that was in the middle of the summer. I believe so.

In the middle of the summer?—Yes, to the best of my memory it was in the year 1862.

In the middle of the summer?—Yes.

At Bristol, you say?—Yes.

A JUROR: Did you speak to him then?—Yes. I had some few friends, foreign Captains, discharging some cargo there, and I invited them to dine with me—I believe at the 'White Horse' and Mr. LUNDGREN came with them, and I saw him there in the hotel, but he did not dine with us.

Was he a Captain, or Clerk, or what, then?—In what capacity I did not ask. I only warned the Captains to have nothing to do with him, because I had had enough when he was with me. (Laughter.)

Did you ever see him after that?—No, not since then.

SAMUEL SHIELDS, sworn.

Examined by Mr. HAWKINS.

You live at Hull?—I do.

Are you a member of the firm of SHIELDS and Company?—I am.

Shipbrokers?—Shipbrokers.

Do you remember the firm of JOHN LUNDGREN and Company carrying on business at Hull?—I do.

Did you, about the middle of the year 1852, join that firm?—I did.

How long did you continue in that firm?—About fourteen or fifteen months.

And then you left it?—Then I left it.

During the time you were a member of that firm, do you remember a person of the name of LUNDGREN?—I do.

Do you remember his Christian name?—CARL I believe was his Christian name.

Did he enter the service of the firm of JOHN LUNDGREN and Company?—He did.

Can you tell me at what period it was he entered the service?—It would be about May or June, 1853.

Was he there when you left?—He was.

Mr. Justice MELLOR: What was he?—Water Clerk, my lord.

Mr. HAWKINS: Do you know Mr. TRANA, the Witness who has been called?—I do.

He was in the same service?—He was, subsequent to my leaving there.

Did you see Mr. TRANA after you ceased to be a member of the firm?—Almost daily.

The LORD CHIEF JUSTICE: Then you still carried on business at Hull?—Yes, my lord.

Mr. HAWKINS: Did you see LUNDGREN?—Yes, almost daily.

I believe you have carried on business at Hull ever since?—Ever since.

To about what period was it you remember seeing CARL LUNDGREN?—The latter part of 1854.

The LORD CHIEF JUSTICE: When you say that you saw him till the latter part of 1854, are we to understand that you saw him in the intermediate time?—Weekly, I may say, or almost daily.

Throughout 1854?—Throughout 1854.

Mr. HAWKINS: And after the latter part of 1854, as far as you were concerned, did you cease to see him in Hull?—That is the case.

The LORD CHIEF JUSTICE: After that you lost sight of him?—Lost sight of him entirely.

Mr. HAWKINS: Now you have seen the man LUIE?—I have.

Who sits there (pointing to JEAN LUIE)?—Yes.

Do you know him?—Certainly.

Who is he?—He is LUNDGREN, CARL LUNDGREN.

The same man you say you were in the habit of seeing down to the latter part of 1854?—The same man precisely.

Cross-examined by Dr. KENEALY.

Did you ever see him since 1854?—Not since that time.

When was your attention first called to this matter of LUIE?—On Saturday last.

By whom?—By Mr. BOWKER, I think, is his name. The gentleman who sits there.

Did he come to you?—He came to my place of business.

Mr. Justice LUSH: In Hull?—In Hull, my lord.

Dr. KENEALY: Did he bring any photograph with him?—He did.

How many?—Three, I saw.

Was one of them the bald-headed one?—Yes, it was.

How long did he remain talking to you?—Perhaps the conversation might last twenty minutes or half an hour.

Did he tell you all about LUIE and what he had been swearing?—He tried to arrive at whether I knew LUNDGREN first, and then whether I knew him by the portraits.

He asked whether you knew LUNDGREN first?—By the photographs.

Which photograph did he show you first?—The one in the pea-jacket and a sort of Garibaldi hat.

He showed you the photograph first, and then as he showed it to you asked whether you knew LUNDGREN?—Yes, I did recognise him.

Did he tell you that was LUIE?—I saw it printed at the bottom of the card. I did not require telling that.

Did he take down your evidence then?—He took down just the heads of it.

And was with you half an hour I suppose?—About half an hour.

Did he say anything to you about the Defendant TICHBORNE?—Nothing whatever to my recollection.

Nothing about him?—No, I think not.

You think not?—Of course I came to the conclusion at once it was the TICHBORNE Case. I could not imagine otherwise than that it was something in connection with that.

Did he tell you anything about the Case?—He went into no details at all.

Whom did you see when you came to town?—I saw Mr. BOWKER at the hotel.

What hotel?—The 'Westminster Palace Hotel.'

Were you in the private room yesterday when they were looking at the photographs?—I was.

A great number of people there?—Twenty or thirty perhaps.

Persons you have seen here as Witnesses?—Exactly.

Were all the lawyers down at the table?—There were several gentlemen who sat writing, I do not know whether lawyers or not.

Did you give your evidence in the room yesterday?—I gave it in more detailed form in the room.

As I understand, the way in which it was done was, some people were sitting around against the wall and others walking about, and they were called up one by one and gave their evidence to the gentleman at the table and he wrote it down?—Precisely.

Did he ask them questions?—Not that I could hear; it was in an undertone.

Did he ask you questions?—I was questioned, of course.

And when you were at the table I suppose you were shown the photographs again?—No, I was not.

Did you see any photographs on the table?—I saw them about the room and on the table.

And people handing them about from one to the other?—Yes, certainly.

Did anyone bring you into Court to identify LUIE?—No, I was in the room when he was brought in there.

Who brought him in?—I suppose one of the Jailers. I cannot say who it was.

Did you all expect him to be brought in?—Yes, I think we were all pretty well aware of it.

And then, of course, when he was brought in, you did identify him?—Well, the question was not asked at all. I merely looked at the man; I did not say anything.

But you were aware that he was coming to be identified?—Yes.

Re-examined by Mr. HAWKINS.

And formed your own judgment about the man?—Yes, exactly.

Mr. Justice MELLOR: You say you saw him frequently in Hull. Did you ever see him wearing a Garibaldi hat like that?—Never.

Did you ever see him without a hat?—He generally wore what is called "a chimney-pot hat," and occasionally a round straw hat.

Have you any doubt whatever he is the same man?—Not the slightest.

The LORD CHIEF JUSTICE: You have seen him, I suppose, without a hat at all?—Oh, yes.

Frequently?—Frequently during the time he was in our employ.

Was he bald at that time?—Yes—just a sprinkling, a few hairs on his head.

Mr. Justice MELLOR: Any beard?—Very little beard then.

The LORD CHIEF JUSTICE: However, you have no doubt he is the man?—Not the slightest.

[Adjourned for half-an-hour.]

Mr. JOHN FREDERICK GRANBERG, sworn.

Examined by Mr. Serjeant PARRY.

Do you now carry on business as a shipbroker at Hull?—Yes.

For how many years?—Thirteen.

On your own account?—Yes.

Had you, before you carried on business there, been at Hull as a Clerk?—Yes.

When did you come to Hull?—1853.

In whose firm were you a Clerk?—HANSMARKER and Co.

Were they shipbrokers?—Yes, and merchants.

How long were you acting as Clerk with them?—About two years.

Will you tell me about what part of 1853 you came, and what part of 1855 you left, do you remember?—No, I do not remember that.

Was it in the early part of 1853 that you came there, or the latter part?—In the early part.

And then you remained for two years?—Yes.

I believe you afterwards went to Cowes?—No, it was before I came to Hull.

I believe you afterwards went to London from Hull?—No, I have been in Hull ever since I arrived there in 1853.

It was before then?—It was before then.

Did you know a firm there of the name of Messrs. JOHN LUNDGREN and Co.?—Yes.

Did you know Mr. TRANA, who was a Clerk in that firm?—Yes.

As Clerk to that firm you knew him, did you?—Yes.

Do you know Mr. SHIELDS?—Yes.

And did you know a Clerk in the firm of JOHN LUNDGREN and Co., of the name of CARL LUNDGREN?—Yes.

What country are you—a native of Finland?—Yes.

What countryman was CARL LUNDGREN?—He was a Swede.

How long did you know him there?—I knew him, I should say, at least a year, that I remember.

And during that time did you constantly see him?—Yes, I saw him often.

Used you to converse with him in Swedish?—Sometimes.

And sometimes in English, I suppose?—Yes.

Now, do you remember particularly in 1854 going to the residence of CARL LUNDGREN with Mr. TRANA?—Yes.

I do not ask you what Mr. TRANA previously said to you; but do you remember going to see CARL LUNDGREN?—Yes, I remember that very well.

Do you remember a conversation with Mr. TRANA and LUNDGREN?—Yes.

What part of the year 1854 was this in?—The latter part of August.

Do you remember whether it was a week-day or Sunday?—It was on Sunday.

Do you remember Mr. TRANA? I do not know that I ought to ask you the whole of the conversation, after what my lords have said, but do you remember Mr. TRANA saying something to CARL LUNDGREN which induced him to refer to a book?—Yes.

You recollect that incident?—Yes.

The LORD CHIEF JUSTICE: That induced LUNDGREN to refer to a book?—Yes; I saw him take a book from the shelf.

Mr. Serjeant PARRY: What was it?

Dr. KENEALY: My lord, I object to this.

Mr. Serjeant PARRY: It is a fact by which his memory is as it were refreshed.

Dr. KENEALY: I apprehend that in absolute strictness, as I said before, the only question that could be asked any Witness is this: Do you remember him in such a year, and if I choose to challenge that in cross-examination, then it is open to my friend to re-examine him. I apprehend that the only thing he can be examined to is as to the year and time and place.

The LORD CHIEF JUSTICE: If there is something which took place which fixes the particular date, it cannot be done for the collateral purpose of showing that he was attempting at that time some fraud, or doing something which is calculated to damage his character and credibility. I quite agree that that cannot be gone into; but if it is anything showing his absence at a particular place at a particular date, I think it can be gone into for that purpose.

Mr. Justice LUSH: It may not only enable him to fix the date, but to identify the man. I think your limit is far too strict; at the same time, I quite agree with my lord he cannot go into details the object of which is the incredibility of the person spoken of, nor, indeed, any details not connected with the date, but identity in most of them is so inseparably connected that we cannot sever them.

Dr. KENEALY: The only reason I think right to interfere is, that the obvious object of these questions is rather to insinuate prejudice than fix facts; if they were simply to fix facts, I would

not so much care, but your lordship knows that the tendency of a great number of the questions that have been asked, and also the answers given to them, rather suddenly as it were shunted in without anybody expecting them coming——

The Lord Chief Justice: I am not aware of those questions nor such answers.

Mr. Serjeant Parry: It is a mere accident that these answers involve the conduct of the man.

The Lord Chief Justice: The view I take of the matter is this: Whatever goes to the general credibility of a Witness—that is, to his general capacity to be a Witness entitled to credit—is collateral, and cannot be gone into; but whatever affects the credit, not generally in all cases, but in a particular case, is not collateral but essential to the issue in the Case; and looking on it in that light, and seeing that here the matter of time is of the essence of the credibility of Luie, I think that all this evidence, fixing his presence in a given place at a given time, and his contradicting the statement he has made that he was at other places, is admissible, because it is relevant to his credibility, not in general but in the particular cause.

Mr. Serjeant Parry: You say you remember going with Mr. Trana. I do not ask you the details of the conversation, but I believe there was a long one between Mr. Trana and Carl Lundgren?—Yes.

Is that fixed upon your mind?—Yes.

Do you remember an incident of his referring to a book?—Yes.

Now attend to my question: What did Trana say to him that induced him or led him to refer to that book?—Before that Mr. Trana called first on me as a Witness in the Case.

The Lord Chief Justice: Never mind what Trana said to you but to Lundgren.

Mr. Serjeant Parry: While at your residence he called on you and you went with him to where Lundgren lived and you found him?—In bed on a Sunday morning.

Did Trana speak to him?—Yes.

And amongst other things he said something which made Lundgren refer to a book?—Yes.

What was that?—Trana said "You have got me into trouble chartering those two ships of Messrs. Heald and Company of Newcastle."

Dr. Kenealy: This is the prejudice I complain of.

Mr. Serjeant Parry: The prejudice is a mere accident.

The Lord Chief Justice: The less we have of this conversation the better, I think.

Mr. Serjeant Parry: What was it that Trana said which made Lundgren refer to a book?—Trana said, "You have got me into trouble about chartering these vessels, and you and me will be transported."

What did Lundgren do?—Went to the shelf and took a book out, and said, "Oh, it is only six months."

The Lord Chief Justice: That is just within the prescribed limit.

Mr. Justice Mellor: That fixes nothing more than is already fixed, but it goes to prejudice, and therefore ought to be excluded.

Mr. Justice Lush: I thought the nature of the transaction with Heald and Company was coming out.

Dr. Kenealy: It is all done now.

Mr. Justice Mellor: I did not hear the Witness say that; it was repeated to me, and it is entirely without the ruling that we desired to follow, namely, that the evidence in reply should be confined to cover a particular period of time, not so far as it could be avoided, to prejudice the Witness, but unfortunately that cannot always be done. If you must give evidence of circumstances you cannot exclude a good deal which you would if you could because it is incidental.

The Lord Chief Justice: Was anything said which fixes in your mind the date and time at which you paid this visit with Trana?—No, I do not recollect the date.

The Lord Chief Justice: Really it should not have been gone into.

Mr. Serjeant Parry: Would your lordship allow me to say this: May not this be evidence as to identity? There is the identity of person and identity of conduct. We have already given evidence with your lordship's full consent—at least so I understand it—of certain proceedings on the part of Lundgren here in London endeavouring under false names to get money. Now, this proceeding with reference to Heald and Company is, I submit, similar in character, and it is in that sense I put it.

The Lord Chief Justice: There the evidence was essential to the identity, because he only became known to the parties through the application to them for a particular purpose, and you could not therefore shut it out as part of the res gestæ, to use an old phrase on that particular portion of the evidence help it; but here it is enough if he says, "I went with Trana and saw this Carl Lundgren, with whom Trana had had some business transaction." You need not go further into it; and then he says, "That man to whom Trana made that visit, and had that conversation with, is so-and-so." That is all you want, and all I think it is legitimate to get.

Mr. Serjeant Parry: Your lordship is aware, as regards the Witness Jean Luie, he has given evidence of the events of his life.

The Lord Chief Justice: I agree; that is the very ground on which we admit evidence in reply; therefore to ask this Witness if he knew Lundgren at a certain period—but to ask whether he went with Trana to see him, and had a conversation, is perfectly legitimate, because it shows that at that time Lundgren was at the place he speaks of; but you need not go into details of a matter in which Trana imputed to Lundgren some swindling or fraudulent transaction; that is what we want to exclude. It is unnecessary to prove that the man he went to see was Lundgren, because he knew him before and independently.

Mr. Serjeant Parry: That is so, only allow me to say this other word of justification—I mean in my own mind—of course I bow to what your lordship says; it is because at this period Luie said he was doing something in a ship called the 'Osprey'; then I think if we showed that he was doing something else at Hull, not only his presence, but what he was actually doing there.

Mr. Justice Mellor: It is not what he was doing, it is something that was said. (Laughter.)

Mr. Serjeant Parry: No, my lord.

Mr. Justice Mellor: The doing was on a particular occasion when he referred to a book; but when you get to the furthest extent you can go.

The Lord Chief Justice: Yes.

Mr. Justice Mellor: Unless Dr. Kenealy chooses to ask him in cross-examination.

The Lord Chief Justice: That is another matter. If with a view of testing these two persons Dr. Kenealy chooses to go into it it is open to him to do so, but not to you on the rule we have laid down, because it simply prejudices the man by a collateral matter which cannot be gone into.

Mr. Serjeant Parry (To Witness): Did you ever learn from Lundgren himself what part of Sweden he came from?—Not from himself, but from other Swedish captains.

The Lord Chief Justice: He spoke Swedish, if I understand?—Yes.

Mr. Serjeant Parry: Just look at that man (pointing to Jean Luie); is that the man you knew?—Yes, as near as I can say; I believe he had no whiskers at the time.

Mr. Justice Mellor: But he is the man you knew as Lundgren?—Yes.

Are you able to say confidently?

Dr. Kenealy: He says as near as he can say, my lord.—Yes, as near as I can say.

Mr. Serjeant Parry: Do you believe him or not to be the man?—Yes, I believe it is the man.

Cross-examined by Dr. Kenealy.

How often were you talking to him?—Often; three or four times a week.

In what year?—1854.

Can you tell me what time in 1854?—August and July too.

Did you begin in July?—No, before that time.

June?—Yes.

And May?—I should say from May, June, July, and August.

From May to August?—Yes.

You had frequent conversations with Lundgren?—Yes; we used to meet about ships and chartering them.

Were you shown a photograph of Lundgren?—Yes, on Saturday, at Hull.

Was that a photograph with a bald head?—No, with a hat on.

Have you seen the one with the bald head?—Yes.

Is the photograph with the bald head an accurate likeness of the man you swear you remember?—Yes. If you put your hand on here (placing his hand across his beard); he had no whiskers.

Do you remember him such a man as that?—Yes.

Now be good enough to look at that carefully; that wrinkled forehead?—Yes, I believe this to be the same.

Do you see that wrinkled forehead?—Yes.

Did that exist in the man that you remember?—Yes; but not so much as it does here now.

He was less wrinkled when you knew him than he appears to be there?—Yes.

That seems to be a very marked wrinkle?—Yes.

Show me a single wrinkle on that man's forehead (pointing to Jean Luie) you can identify. Look at him: is there one single wrinkle in the forehead?—(No answer.)

Do you see? Show me the semblance or trace of a wrinkle on that man's forehead: do you see an atom of a trace of a wrinkle there?—(Witness and Jean Luie stared one other in the face but no answer was given.)

The Lord Chief Justice (who had been examining Lundgren's photograph): Do you see any wrinkles on this Dr. Kenealy? (Laughter.)

Dr. Kenealy: Oh yes, my lord; full of them. (Laughter.)

The Lord Chief Justice: I do not.

Dr. Kenealy (To Witness): Show me a trace of a wrinkle there?

The Lord Chief Justice: I should desire the Jury to look at it, because I see none. There is a small contraction over the brow here. I do not see any wrinkle.

Dr. Kenealy: I shall ask the Jury to see a wrinkle in that photograph from Chatham. Your lordship says you cannot see wrinkles there. I must leave that to the Jury.

Mr. Justice Mellor: It seems that there is rather a projection of the bone of the eyebrow, and then that always leaves, not a wrinkle, but a sort of indentation.

Dr. KENEALY: I shall ask them to exercise their eyes and judgment. (The photograph was handed to the Jury.)

Dr. KENEALY: Oh, do let them look at the original! I do not like these little copies.

A JURYMAN (who had been looking at the photograph): It is only an elevation of the right eyebrow.

Dr. KENEALY: I call it a wrinkle.

The LORD CHIEF JUSTICE: To make a sweeping assertion of that sort is as if the Witness was saying something altogether extravagant when he says they are the same man, the forehead of one being full of wrinkles and the other wholly devoid of them. When I come to look at the photograph I see a contraction common to many people, and when put into the light for a photograph to be taken sometimes it produces it in an exaggerated form, but there are no wrinkles to my sight.

Dr. KENEALY: I should have thought your lordship would have left that to the Jury.

The LORD CHIEF JUSTICE: Of course; but when you assert a fact——

Dr. KENEALY: My assertion was a denial of your lordship's.

The LORD CHIEF JUSTICE: I beg your pardon. You told the Witness it was full of wrinkles, and challenged him.

Dr. KENEALY: I assure your lordship it was an answer to your assertion.

The LORD CHIEF JUSTICE: I beg your pardon, it was no such thing.

The JURYMAN: Is that what you understand in law, my lord, as a *suggestio falsi?* (Laughter.)

Dr. KENEALY: Now, can you trace one single wrinkle on that man's forehead? Are you able to see him?—I do not see any wrinkle.

Now, look again at that photograph with the glass. (It was handed.) And look at the arch of that forehead. Do you see it?—I see just a little here (drawing his hand across the lower part of the forehead).

The arch of the skull?—Yes.

You see that?—Yes.

Now look at LUIE. Is not the arch in that photograph a lower arch than the arch of his forehead?

The LORD CHIEF JUSTICE: That is a matter for the Jury; there is the photograph.

Dr. KENEALY: When I am addressing the Jury, LUIE may be GOD knows where, and I want the Jury to see the man while he is here.

The LORD CHIEF JUSTICE: That is a very good reason for asking the Jury to do it.

Dr. KENEALY: That is the reason I am doing it.

Mr. Justice LUSH: Why not invite the Jury now to examine him, but you cannot do it through the Witness.

The LORD CHIEF JUSTICE: They have looked at him again and again.

Dr. KENEALY: Perhaps, my lord, they may not have looked at him with the same eyes as I. (Laughter.)

The LORD CHIEF JUSTICE: No, I quite agree that it is material for your Case that you should invite them to look at him, and with reference to particular points you are making the only question is whether you can do it through the Witness.

Dr. KENEALY: How can I do it when he has gone away? The reason I do it is because I have him here.

Mr. Justice LUSH: Cannot you invite the Jury now to call attention to anything?

Dr. KENEALY: Am I to make a speech now?

Mr. Justice LUSH: No.

Dr. KENEALY: I only wanted to unfold, as it were, what seemed to me the different points of want of resemblance between the Convict photograph and the actual man, and thought the best way of doing that would be to ask the Witness about it, and get it upon the notes, and afterwards call the Jury's attention to whether I am right or wrong.

Mr. Justice LUSH: Supposing a Witness not accustomed to take very accurate observation, or whose eyesight was not very good, and he made answers which you think not correct, or perhaps the Jury think otherwise, upon the photograph and the original, by-and-bye that may go to the Witness's credit in other matters. It is not a matter of testimony at all.

Dr. KENEALY: In what way does your lordship suggest that I should do it? Because I should be most happy to do anything your lordship suggests, while we have the man here, because I do not know how long we may have him here.

Mr. Justice LUSH: You have a right to point out to the Jury anything you desire to mark in his person.

Dr. KENEALY: Then, after I have done with this Witness, with your lordship's permission, I will do that.

The LORD CHIEF JUSTICE: It is not as if the Witness came and said, "I speak to this man simply from having seen a photograph," and he says, "I recollect him; I have the memory of the man fresh in my mind, and I say the man I now see is that man;" he does not pin himself or his credit as a Witness to the particular portrait he has seen.

Dr. KENEALY: I want to point out the dissimilarity of features between LUIE and LUNDGREN, and I do not know how to do it unless he is here.

By the JURY: Are we called upon to take the opinion of a Witness as to the resemblance between a photograph and a man?

The LORD CHIEF JUSTICE: Certainly not. That would be asking you to take the opinion of a Witness on a matter which subjected to your own eyesight you are capable of forming an opinion of without.

A JURYMAN: If he were a photographic artist, it would be different.

The LORD CHIEF JUSTICE: It might be a very different thing.

Dr. KENEALY: The way I propose to do it is this: Having called the attention of the Witness to the various wants of resemblance between LUIE and the photograph, I was going to ask him at the end whether he still adhered to his opinion. I thought that was legitimate.

The LORD CHIEF JUSTICE: Unless he swore the photograph precisely corresponds with the memory he has of the man. Supposing there were no photograph in the Case at all; he has the image of the Witness present to his mind, or says so, and then he says, "Comparing the image of the Witness I have in my mind, with the image of the person in my sight, I say he is the same man." You have a perfect right to ask him, Had the man you recollect an arched brow? or had he this, or that, or the other in his features? and then ask him whether that corresponds with the man he sees before him; but he cannot make a comparison with a photograph, that is really what the Jury have suggested, substituting the opinion of the Witness for the deliberate judgment which they ought to form.

Mr. Justice MELLOR: You would be able, having asked the Witness whether the person whom he has now described had such and such marks and such and such appearances, then to point out to the Jury the discrepancy between the observation of the Witness speaking of his memory of the man and the appearance of a photograph, which some of the Witnesses, at all events, had been shown; and though they did not absolutely form their opinion from it, yet they were asked as a preliminary measure whether they had not seen such and such a photograph; and you have a right to ask the Jury whether they can distinguish in that photograph such marks or their absence; but you cannot ask the Witness to compare the photograph with the Witness LUIE.

Dr. KENEALY: Well, I will do what the Chief Justice suggests; that is, take him through the various features which it seems to me are dissimilar between LUIE and this photograph, and then at the end ask him does he still adhere?

The LORD CHIEF JUSTICE: That is another thing.

Dr. KENEALY: Or rather I would do what Mr. Justice LUSH suggests, point out now those features which seem to me entirely dissimilar, and then let the Jury judge.

Mr. Justice LUSH: LUIE must be here as long as this class of Witness is called; and when you have done, would not that be a more convenient time for you before he leaves the Court, to point out to the Jury any marks you desire them to look at?

Dr. KENEALY: That would to a certain extent interfere with the order of my address to the Jury, because I really did not mean to introduce the LUIE episode at the very beginning of it.

A JURYMAN: I hope you will not at all.

Dr. KENEALY: I assure you I mean to.

Mr. Justice LUSH: You might do it at any time that it would come conveniently into your address.

Dr. KENEALY: It may be done now as well as any other time.

Mr. Justice MELLOR: I do not think you could make now a speech to the Jury on the subject, but only ask the Witness, and then, when you come to make your observations, point out on the photograph either that they are or are not the particular marks which the Witness professes to remember in the person of LUIE. That is the extent to which I think you may go.

Dr. KENEALY: Then LUIE may not be here?

Mr. Justice MELLOR: But whilst you are asking the Witness LUIE is here and the Jury may look at him.

Dr. KENEALY: I thought it fairer to put it in this way if your lordship will allow me, that whilst there is the photograph of the undoubted LUNDGREN before we call attention to this photograph, and then point out that the same features do not exist in this man before them. Test it in this way—suppose I were to ask him without showing him this, which I still must argue does show a wrinkled brow—had LUNDGREN a wrinkled or a smooth brow, looking at this man he might answer offhand, without meaning to colour or distort the truth, "Yes, entirely unwrinkled;" whereas, if his memory is refreshed by this which is before me, he would give a more truthful answer.

Mr. Justice MELLOR: How is his memory to be refreshed by something he has only seen the last day or two?

The LORD CHIEF JUSTICE: And which is a photograph of a man in 1873. How is that to refresh him as to a person he saw in 1854?

Dr. KENEALY: If he had wrinkles in 1873, he would have them now in this Court.

A JUROR: Whether there is a wrinkle or not is not of the slightest importance.

Dr. KENEALY: I assure you, with all submission to you, sir, that it is of the greatest importance. The decision of the whole I hope you will not take upon yourself.

The JUROR: I have not done such a thing, and I protest against your insinuating it.

Dr. KENEALY: The dissimilarity of the features here with those of the man in Court I intend to make a very strong point of.

The JUROR: I am not the only person who is desirous that

you will not waste time: there is no wrinkle in the photograph.

Another JUROR: Not the slightest.

The LORD CHIEF JUSTICE: That is the point.

The JUROR: There really is not.

Dr. KENEALY: Two or three of you may say so, but until I hear the united voice that there is no wrinkle——

Several JURORS: We all say it.

Dr. KENEALY: As you are all united on that question of the wrinkle, of course I shall not raise it again. Now I must come to the other points of dissimilarity, and I hardly know how I am to deal with them; because if I am to point them out to the Jury now, it seems that I can only do so in the way that I take the liberty of suggesting. If I am to do it when the man is gone and cannot compare my observations upon this with the appearance of the man, it seems to me that injustice will be done; and therefore I would like to place myself in the hands of the Court with reference to that. I am anxious to avoid doing anything the Court considers unusual, but at the same time I am extremely anxious to reserve to myself the right of pointing out what I say is the dissimilarity between the photograph and this man.

Mr. Justice MELLOR: I think you can only do it in that way. You can ask the Witness as to his memory—try his memory as to the particular matters he remembers him by, as to the presence or absence of marks; and then when you come to make your address to the Jury you can point out in that photograph which you represent to be of LUNDGREN, any absence or presence, and therefore any difference between the marks on the photograph and the marks which the Witness has described.

Dr. KENEALY: Now, do you remember whether LUNDGREN had a highly-arched brow or was not very highly arched?—I do not remember that.

Do you remember whether or not he had a deep hollow under his eyes?—No.

Do you remember whether he had any strongly marked lines proceeding from this portion of his face down each side?—No.

Do you remember what the expression of his eyes was at all?—No.

Do you understand me if I ask you this. Do you know what a haggard expression of the eyes is?—No, I do not understand exactly what you mean.

You say "exactly," do you at all appreciate what I mean to convey by a haggard, a woe-worn expression of the eyes?—No, I do not understand it.

Do you know whether he had a habit of beating his brow?—No.

Is that all that you have of him, a kind of vague general recollection?—Yes, I remember what I told you.

The LORD CHIEF JUSTICE: "I remember him when I called on LUNDGREN with TRANA about those charters."

Dr. KENEALY: Am I correct in saying all you have of him is a vague general recollection?—Yes.

The LORD CHIEF JUSTICE: What do you mean by a vague general recollection?—I just remember the thing when it took place.

That is not what you are asked; you are asked, what is your recollection of the man himself; whether you have anything more than a vague recollection, or whether you have an actual, positive recollection of the man?—I just remember the thing; it is so many years back.

Mr. Justice MELLOR: Do you believe he is the man?—I cannot exactly swear that is the man, but I believe.

You believe he is the man, but cannot exactly swear to it?—No.

The LORD CHIEF JUSTICE: Then it is a vague recollection?—Yes.

Re-examined by Mr. Serjeant PARRY.

At all events he is the man you saw with TRANA on that Sunday morning?—As far as my memory, I believe.

Mr. JOHN NICHOLAS SCHERLING, sworn.

Examined by Mr. HAWKINS.

Do you live at Hull?—I do.

What are you?—Tailor and Outfitter.

Do you know a person of the name of LUNDGREN?—I did.

At Hull?—At Hull.

When do you first remember him?—In the early part of 1853, I should say about the spring of the year.

I do not mean JOHN LUNDGREN and Company, but Carl LUNDGREN?—I would not be positive to his Christian name. I know JOHN LUNDGREN, who went by the name of Lord JOHN. (Laughter)

The LORD CHIEF JUSTICE: What was the other man who was known by you?—He was a Clerk employed by the firm.

Mr. HAWKINS: Was he known by any name at all besides LUNDGREN?—Not to my knowledge.

You say that was the early part of the year 1853?—About April or May.

Did you see much of him?—Yes, almost daily.

What countryman are you?—I am a Swede by birth.

Mr. HAWKINS: For about how long?—For about a year and a half.

Do you remember hearing of some matter between TRANA and LUNDGREN?—I do.

About what period was that?—It would be about August or September.

In what year?—1854.

Do you remember whether you saw LUNDGREN after that time?—A few days, to my best recollection.

Did you then lose sight of him altogether?—I did.

Have you seen him since?—I saw him in Court yesterday morning.

Do you see him in Court to-day?—I do.

Just point him out?—Sitting between there, just there, the third from the other end (pointing to JEAN LUIE).

Cross-examined by Dr. KENEALY.

Have you anything to fix the first time you saw him?—I remember it was twelve months after my arrival in England.

And when did you arrive in England?—In 1852—in April.

And it was twelve months after you arrived, in April 1852, that you saw LUNDGREN?—That I made his acquaintance.

What?—To the best of my knowledge; I do not speak to a day.

I do not ask you to. When was the last time you say you saw him?—As near as I could say, August or September 1854.

How did it come to pass that you saw him almost daily?—Being one of his countrymen; we generally met at a certain hotel.

You went there almost every day, did you?—Well, generally once in a day.

What was the hotel?—The 'Minerva Hotel.'

The LORD CHIEF JUSTICE: Do I understand you the Swedes frequented that hotel?—They did.

Dr. KENEALY: About how many Swedes were in the habit of resorting to the 'Minerva'?—I should say there were perhaps a dozen; I would not say as to number.

And is there any other Swede here except yourself who was in the habit of going to the 'Minerva'?—There is not one in London that I am aware of; there is one in London, Mr. TALLEEN, who used to go there occasionally.

Are you and TALLEEN the only Swedes who went there then who are in this Case?

The LORD CHIEF JUSTICE: He has not said that TALLEEN is in this Case.

Dr. KENEALY: TALLEEN is one of the Witnesses we have had notice of.

Mr. HAWKINS: He is here, my lord.

Dr. KENEALY: Now are you the only two who were in the habit of going to the 'Minerva' that are here in this Case?—I believe so.

When were you first spoken to about this matter?—Last Saturday afternoon.

Who was the person that spoke to you?—A gentleman of the name of MASON, in Hull.

Is he a lawyer, or Detective, or what?—He is a merchant.

How came he to speak to you about it?—I do not know, but he saw I was one of the old Swede residents in Hull.

Did he come to you about it?—He did.

Is Mr. MASON here?—He is not, to my knowledge.

Did he bring you any photograph?—No.

Did he bring you anything?—No.

He merely came to speak to you about it?—Yes.

Did he tell you that LUIE was LUNDGREN?—No; he asked if I could recognise LUNDGREN who was in Hull at that time, which I said I could.

And he asked you that without bringing any photograph or likeness?—Yes.

You were prepared to say you could recognise him, then, without seeing him?—Not without seeing him.

You remembered him very well, did you?—I remembered his countenance without seeing him, but I could not recognise him without.

Now, was he bald in 1853?—He was.

Quite?—Not quite, but very near, on the top of his head.

Had he a beard at that time?—No, he had only whiskers.

Did MASON communicate with LUNDGREN, or did you, when you saw him?—No; he brought me down to the 'Minerva Hotel,' where I met with the gentleman from London who subpœnaed me. I met with the gentleman sitting opposite me here. Mr. BOWKER, I believe, is his name.

Oh! you met Mr. BOWKER at that place, did you?—I did.

I hope he showed you some photographs?—Oh, yes, he showed me his photographs.

And I believe he had some conversation with you about them?—Very shortly.

Hardly any, perhaps?—He asked me if I could recognise that likeness.

Which photograph did he show you when he asked you that?—He had two.

Did he show you both at the same time?—Yes.

And asked you to recognise the likeness?—Yes.

Did you see the likeness?—I did.

Are these the two he showed you, or anything like them (handing two photographs)?—Yes.

Those are like the two he showed you?—These are the two he showed me, or similar to them.

And you see, you say, a likeness between these two, do you—Yes.

How long was Mr. BOWKER with you?—I should think about ten minutes.

Did he write down what you were going to prove?—No, the only question he asked was whether I could recognise him.

Did he take any notes?—No.

Then were you brought up to town?—Then I was asked to come up.

Did you come up with him?—No, I came up on Sunday night.

Were you in the room yesterday morning where all these Witnesses were assembled?—I was in a room together with several Witnesses I have seen here.

Were you there when LUIE was brought in?—Yes.

Did you see them hand about photographs from one to another?—No.

How long were you in that room?—Perhaps half-an-hour.

And you did not see them handing any photographs?—I did not.

Did you see any in the room?—I saw there were some laid on the table.

Did you see the Witnesses giving their evidence at the table?—No, I did not.

Did you see them do anything?—I saw them writing down statements.

That is what I call giving evidence. You saw the Attorneys writing down statements as each Witness came up to the table; and is that the way they took down your statement?—Yes, my statement was taken down yesterday morning.

When LUIE was brought in did you see he was in custody?—No, I could not see he was in custody.

Did you see a man with him?—I saw there was one or two with him.

In a friendly way, was it?—Well, they were dressed in civil clothes.

Do you see either of them here now?—I believe the one sitting on his right side was one.

I thought so; and the one on the left the other?—I did not notice him.

Had you any doubt at all when brought in that he was in custody?—It never entered in my mind whether he was or not.

And then when they came, did they say, "Here is LUIE"?—No. I was confident the moment I saw him that he was LUNDGREN.

I know, but when bringing him in, did anyone say, "We are waiting for LUNDGREN," or, "Here is LUNDGREN," or anything of that sort?—No, I did not hear any remark of the kind.

I suppose his coming in with those gentlemen excited a little bit of sensation?—I did not notice anything. I was speaking at the time.

Mr. JAMES COOPER, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Clerk in the service of Messrs. HUMPHREYS and SON, shipbuilders, at Hull?—Yes.

How long have you been in their employment?—I commenced with them in 1856.

Were you at Hull previous to that?—Yes.

Are you a native of Hull?—No.

When did you begin to reside in Hull?—1849.

In 1853 and 1854 did you know the firm of JOHN LUNDGREN and Company, shipbuilders, of Hull?—Yes.

Did you know among their Clerks a Mr. TRANA?—Yes, I knew TRANA.

Did you know Mr. SHIELDS?—Yes.

Did you know a Clerk of the name of LUNDGREN?—Yes.

Did you know his Christian name?—No, I am certain of that.

How long did you know him in Hull at that time?—Well, it was the middle part of 1853 and up to about the middle of 1854, when I lost sight of him.

When did you afterwards see him?—Yesterday and to-day.

Can you point him out?—The third person from the left there (pointing to JEAN LUIE).

Now, are you sure he is the man you knew as LUNDGREN, the Clerk?—That is the person I knew as LUNDGREN, in 1853 and 1854.

How do you fix the date?—Well, I had just come from Sweden at that time, the latter part of 1853; that makes me so sure of it.

Did you know Swedish then?—Yes.

Did you know what countryman LUNDGREN was?—I had heard he was a Swede. I heard he came from Gothenberg.

Were you in the habit of speaking Swedish to him after he came?—I would not be certain, only once that I think we did.

Cross-examined by Dr. KENEALY.

Can you fix distinctly any date that you will swear you were in personal communication with him?—I could not fix a date.

Or the place?—Yes, the place I could.

Where?—The 'Minerva Hotel,' Hull.

What! were you one of the Swedes that went to 'Minerva Hotel'?—No. I used to go there because I was acquainted with several, both Swedes and Fins, that used the hotel.

But you cannot give me a single date when you met him, as you say, at the 'Minerva Hotel'?—No, I could not give you a date.

Were you an acquaintance of his?—No.

Then you knew him only by his appearance?—Only by his appearance.

You never, as I understand, had any conversation with him such as an acquaintance would have?—I do not recollect ever having any conversation with LUNDGREN, no more than just that first time I saw the man, and that was at the 'Minerva Hotel.'

Perhaps that was the only time?—Oh, I have seen him several times after that.

The LORD CHIEF JUSTICE: That was in Swedish, I believe?—Well, we were conversing both in Swedish and English, my lord.

Because you said you spoke to him once in Swedish?—Well, the first was Swedish.

Dr. KENEALY: Are you quite sure you ever spoke to him at all?—I am certain I did.

Was anybody present?—Yes, TRANA was present.

Oh, TRANA. Is TRANA a Swede?—Yes.

He is the only person you can vouch for?—The only person that I can remember now that was present.

When were you first talked to about this matter?—Last Saturday.

By whom?—A gentleman of the name of BOWKER.

Oh, did he come down to you then in the country?—I saw him in Hull.

Did he bring you any photographs?—Yes.

Are these like the photographs he brought to you (handing two)?—Yes.

With the name of LUIE written on the bottom?—Well, I cannot say that I saw it.

Come, come.—I did not notice the name.

Do look at them again, like a good fellow?—They are the same as I have seen, but there was no name that I know attached to them.

Look at that one again. Are you prepared to swear the name was not at the bottom?—I am prepared to swear I did not notice it; it might have been there, but I did not notice it.

How long was Mr. BOWKER with you?—I do not know; eight or ten minutes.

Did he write down what you had to say?—Well, I believe he did note down my name and address, and such as that.

And he noted down something, at all events, that you did not read?—No.

And then you were brought to London?—Yes.

And were you in the private office yesterday where they were all assembled?—Yes.

And did you see LUIE brought in in custody of that gentleman there, leaning on his stick?—I saw LUIE brought in.

With that gentleman, did not you?—That I will not be certain. I did not exactly notice who was with him; but I know the man I knew as LUNDGREN was brought in there.

And you were all expecting him, I suppose?—That I cannot say I did, because I expected I should have gone out and seen him.

Did you give your evidence after all the other people were there?—Well, there were several in the room at the time.

And did you see the photographs they were handing about?—Well, there were some lying upon the table there.

And were not they handing them about and looking at them?—Well, I do not know; they might have done so.

It is only yesterday morning; do not talk to me about "might," if you please. Were not they?—I saw them laying on the table myself.

Were not they handing them about and looking at them?—Some might have done.

Mr. BOWKER was there taking statements and asking questions?—Mr. BOWKER was in the room.

Was he there taking statements and asking questions?—Well, I expect he might have done.

Was he or not?—I dare say he was. I could not say what he was doing.

Re-examined by Mr. Serjeant PARRY.

Was it young Mr. BOWKER?—The gentleman that sits there.

Between the times you knew him, 1853 and 1854, how often do you think you saw him?—Really I could not say. I used to see him in the streets and often about. I could not say how many times I saw him.

Used you to see him every week of your life?—Perhaps I might. I would not even say that.

The LORD CHIEF JUSTICE: How often do you think you saw him at the 'Minerva Hotel'?—I would not be certain if ever I saw him at the 'Minerva Hotel' more than the once.

Mr. JOHN AXEL TALLEEN, sworn.

Examined by Mr. HAWKINS.

I believe you are now Clerk in the employ of PHILLIPS, GRAY, and Co., of St. Dunstan's Hill?—I am.

Are you a Swede?—I am.

When you came over from Sweden where did you go to in England first?—Hull.

Can you tell me what date it was you came to Hull?—I could not exactly say the date, but it was early in February, 1854.

Now, after your arrival in Hull did you become acquainted with a person named LUNDGREN?—Yes.

How soon after your arrival?—Shortly after. I think there were other Scandinavians there at the time.

Was he in any employ when you first of all knew him?—No, I think not. I think he had left his situation then.

Did you see much of him?—I saw him frequently on the quay, and amongst the Captains on board ships.

Until what period do you remember seeing him?—It was in the autumn of 1854 he left Hull.

Do you remember any particular circumstances happening which preceded his leaving which fixes the circumstance on your memory?—Yes, I do; he was trying to charter, or did charter.

I will not go into the particulars, but——?—In short, he disgraced himself.

Did anything result from that. I mean, was anything done for him?—Well, Mr. HARVENSEN, a Swede, and some gentlemen residing in Hull at the time, got up subscriptions so as to get rid of him—paid his passage to Cardiff, I think.

Dr. KENEALY: Is this evidence, my lord?

The LORD CHIEF JUSTICE: It shows the date of his leaving Hull. He says he got into disgrace about the charter-party, and then Mr. HARVENSEN got up a subscription to send him from Hull, he thinks, to Cardiff. That is a fact connected with the date. Did you subscribe yourself?—Yes, I did.

Mr. Justice LUSH: Can you tell when this was?—It was in the autumn of 1854.

Mr. HAWKINS: After the subscription was got up, did you cease to see him in Hull?—I never saw him since.

Have you seen him recently?—I saw him recently.

Where did you see him recently?—In a room in this Court.

Do you see him in Court to-day?—Yes, I do.

Is that the man (pointing to JEAN LUIE)?—That is the man.

Cross-examined by Dr. KENEALY.

Who came to you about this Case at Hull?—I am residing in London.

Who came to you in London?—I cannot tell you who it was. It was a gentleman came to the office on Saturday afternoon.

Do you know Detective CLARKE?—He represented himself from Mr. STEPHENSON, I understood.

Do you see him now in Court?—I saw him just now.

Did he bring you any photographs?—No.

Was he an Attorney's-clerk or Detective, do you know?—That I cannot say.

Mr. Justice MELLOR: I thought you said that he said he came from Mr. STEPHENSON?—He represented himself as coming from Mr. STEPHENSON, or from the Treasury rather, I think was the expression.

Dr. KENEALY: Was it a man wearing a grey coat who has just left the Court?—Yes, and pock-marked.

Have you ever heard that was WHICHER?—No, I have not.

You have seen him about the passages of the Court here since you came?—Frequently, up and down.

Did he bring you any photograph?—No, he did not.

Did he take you to where they were shown you?—No, I have never seen any photographs even.

Then you were not in the private room yesterday morning?—No, I was not. I came rather late. (Laughter.)

Then I will not ask anything of you about it.

ELIZA GOLLEDGE, sworn.

Examined by Mr. Serjeant PARRY.

Do you reside in Sophia Street, Bute Street, Cardiff?—Yes.

How long have you resided in Cardiff?—Since 1851.

Did you know a person of the name of CARL LUNDGREN in Cardiff?—Yes.

Do you remember his being married?—I do.

How long ago is that? Do you recollect their marrying?—It was the latter part of 1854 I knew him in Cardiff, and April 1855 he was married.

What was the maiden name of his wife?—SARAH COLBOURN. (Laughter.)

How is it spelled?—COLBOURN.

The LORD CHIEF JUSTICE: That is satisfactory; let us hope, Mr. HAWKINS, that you will get out of it equally well. (Laughter.)

Mr. HAWKINS: Oh! mine was spelled with a "g"—"ings." (Laughter.)

Mr. Justice MELLOR: Were you present at the marriage?—I was not.

The LORD CHIEF JUSTICE: You knew the wife before the marriage, did you?—Yes; she was living at our house before she was married. He took her away from our house.

Mr. Serjeant PARRY: Did your father or husband keep the 'Scandinavian Hotel'?—My husband now. I was then housekeeper.

He kept the 'Scandinavian Hotel,' Bute Terrace?—Yes.

Did you see him after his marriage?—Yes.

Did you learn from him where he was married?—He was married at Melksham, in Wiltshire.

How long did you know him altogether?—I knew him, I suppose, for more than a twelvemonth in Cardiff. I knew him when he was with Mr. SULLY. He was using our house, coming backwards and forwards with the Scandinavian Captains, and I knew him with Mr. CORY.

They were shipbrokers at Cardiff?—Yes.

Have you seen him recently?—I saw him recently.

Is that the CARL LUNDGREN whom you knew (pointing to JEAN LUIE)?—Yes.

Who married SARAH COLBOURN?—Yes.

Cross-examined by Dr. KENEALY.

I suppose he has not at all changed since you knew him?—Of course he is looking older.

That is the only change?—He is looking older. I do not see much change in him more.

You knew him, I suppose, at once?—I knew him directly I saw him.

Did they show you any photographs?—Here? No, they showed me no photographs here. I saw one in Cardiff.

Who showed you?—I saw it in Mr. STEVENS's office—a Solicitor at Cardiff.

Did Mr. STEVENS send for you?—Yes, he sent.

When?—On Saturday afternoon.

I suppose you can read and write?—Yes.

Did he show you the photograph with LUIE'S name at the bottom of it?—No.

What one did he show you?—I saw no "LUIE" at the bottom of it. I took no notice whether there was a name there or not.

Was that like the photograph he showed you (handing one)?—It was similar.

Was that the one he showed you, or like it (handing another)?—It was one like it.

Now look at the bottom of it.—I did not take notice whether the name was or not, or look at it.

Did not you look at it?—I looked at the bottom, but I did not notice the reading under.

Is this the only one he showed you?—It is.

How long were you with him?—I might have been there five minutes, not more.

A very short time?—I was not there longer.

Mrs. MARY MATILDA JOHN, sworn.

Examined by Mr. Serjeant PARRY.

Are you the daughter of the lady who has just been examined?—No, she is my stepmother.

Are you married yourself?—Yes.

What is your husband?—He is a carpenter.

Where does he reside?—In Cardiff generally, but now he is a little beyond Newport.

Do you know Mrs. GOLLEDGE?—Yes.

And did you know Mr. GOLLEDGE, keeping the 'Scandinavian Hotel,' Cardiff?—He is my father.

Did you know a person in Cardiff of the name of CARL LUNDGREN?—Quite well.

Did you know SARAH COLBOURN, whom he married?—Yes, she was an intimate friend of mine.

How long did you know CARL LUNDGREN?—Eighteen or nineteen years.

Ago?—Yes.

For how long did you know him? I mean for twelve months, or longer, or what?—Longer than twelve months.

Have you seen him since, recently?—Not for nearly thirteen years until recently.

Did you see him after he left Cardiff at any time?—I saw him after he came out of of Gaol the first time.

When was that?—Some time after he got married in 1855.

At all events, you saw him afterwards, and when did you see him recently again?—I do not remember seeing him since.

Have you seen him within a day or two?—Yesterday.

Is that the man you knew as CARL LUNDGREN (pointing to JEAN LUIE)?—Yes, that is the same man.

And who married your friend, SARAH COLBOURN?—Yes.

Do you know where they were married?—At Melksham church, in Wiltshire.

Cross-examined by Dr. KENEALY.

Were you at the marriage?—I was not.

It was in 1855?—It was.

You remember it very well?—I remember the circumstance. I was not at his wedding.

You must have been a very young girl then?—I was not very old; still I remember the time quite well.

It is nearly twenty years ago?—Eighteen.

You were not more than six or seven years old, were you?—Oh dear, yes. (Laughter).

Oh you were, were you?—Yes.

He was a bad fellow, and he was in Gaol, was he not?—That I cannot tell.

You told my friend that he was in Gaol?—He was in Gaol but whether he was bad there, I cannot say.

She was ill-used, your friend?—I believe he has ill-used her.

When did they first talk to you, about, was it last Saturday?—It was.

I suppose you and Mrs. GOLLEDGE were sent for to Mr. STEVENS?—We were sent for.

Did they show you a photograph there?—One I saw.

Was that the sort of one they showed you (handing one)?—It was similiar to this, but taken full face.

Is not that full face?—No, that is taken more side face than full.

Was it like this (handing another)?—Yes.

Is that the one?—A smaller photograph than that.

But representing that face?—Yes.

The LORD CHIEF JUSTICE: Let me see that. (It was handed to his Lordship.) This one I have not seen before.

A JUROR: Did he live with his wife after he came out of Prison the first time?—Oh, yes.

The LORD CHIEF JUSTICE: He had some imprisonment we have heard nothing about, I believe?

The WITNESS: It was in Cardiff Gaol.

Mr. Justice MELLOR: Had he been imprisoned before he was married?—I believe not; that I cannot say.

Dr. KENEALY: Did you see his name at the bottom of the photograph?—Yes, "JEAN LUIE."

Did Mr. STEVENS take down your statement?—He did.

I suppose Mr. STEVENS said he and LUNDGREN were the same?—He did not.

Did he say anything about LUIE?—He merely asked if I knew whose portrait it was.

The LORD CHIEF JUSTICE: Who?—Mr. STEVENS, Solicitor, of Cardiff; if I could recognise it, and I at once said it was LUNDGREN.

SIR J. D. COLERIDGE, LORD CHIEF JUSTICE OF THE COMMON PLEAS.

Dr. KENEALY: Who came to you from Mr. STEVENS?—A Clerk.

Did not the Clerk tell you what you were wanted for?—Simply to recognise a portrait there.

Did you not know whose portrait it was?—I did not see the Clerk himself; it was my stepmother.

Did not she tell you whose portrait it was?—She came and asked me if I would know LUNDGREN. I said "Yes," and she said, "Do you think you would recognise his portrait," and I said "I do not know unless I see it."

You had not the least doubt whose portrait you were going to be shown?—When I went I did not think I should recognise him after so many years.

You had not the least doubt whose portrait you were going to be shown?—I did not know whether one or two or three I was going to see.

Did she ask you whether you could recognise it at the office?—She told me it was for that purpose.

Mrs. SARAH LUNDGREN, sworn.

Examined by Mr. HAWKINS.

Are you now living at Bristol?—Yes.

No. 11, Horse Fair, I think?—Yes.

Were you the daughter of Mr. WILLIAM COLBOURN, a builder, at Melksham?—Yes.

In the year 1854, did some friends of yours keep the 'Scandinavian Hotel' at Cardiff?—Yes.

Were you on a visit to them in the year 1854?—Yes.

About what period of the year?—Just before Christmas.

Did you there make the acquaintance of a person of the name of LUNDGREN?—Yes.

What were his Christian names?—CARL PETER, he always told me.

Did you afterwards marry that person?—I did.

When?—In 1855.

What period of the year 1855?—The 2nd of April.

Where?—At Melksham.

Now, do you remember some time after your marriage, whether or not your husband was tried at Bristol. Do you remember his being in Prison?—Yes.

After your husband came out of Prison did you live with him for a time?—Five weeks.

At the end of that time did your husband leave you?—Yes, I bade him good-bye at Reading to go to my father's in Melksham.

Did he tell you where he was going?—He told me he was going to Liverpool.

Did you receive any letters from him after he left you to go to Liverpool?—Not from Liverpool. I received one from Queenstown, in Ireland.

Have you got that?—I have not. I have lost it.

Did you reply to that letter?—I did.

Did you receive any other letters from your husband than the one you have told us of?—Not one.

Did he ever communicate with you again?—No.

Did your husband at any time tell you where he had come from?—He told me he came from Gothenberg, in Sweden.

Did he tell you whether he had been living in any place in England?—He told me he came from Gothenberg to Hull.

Did he mention any other place to you where he had been?—Not when he said he left Hull and came to Cardiff where I saw him.

Have you seen your husband lately?—I saw him about there (pointing to JEAN LUIE).

The man you have pointed out?—Yes.

The LORD CHIEF JUSTICE: When was it you parted at Reading?—I cannot remember.

Mr. HAWKINS. It was after the imprisonment.

Mr. Justice LUSH: Five weeks after.

A JUROR: How long had you been married when he went to Prison?—It was about seven years.

The LORD CHIEF JUSTICE: Was it when he was tried at Bristol?—Yes.

Cross-examined by Dr. KENEALY.

What date do you say you saw him last?—Last before now do you mean?

Yes.—That I cannot tell you.

The LORD CHIEF JUSTICE: He was in Prison for the Civil Suit, that is put on one side, and then this was after Bristol?—Yes, I have not seen him since till now.

And then he had to go under penal servitude?—Yes.

Was it after that that you were with him for five weeks and then parted?—Yes.

Dr. KENEALY: That would be 1865.

Mr. Justice MELLOR: I think that was the sentence for three years.

Mr. Justice LUSH: And the conviction of October, 1862.

Dr. KENEALY: Do you remember his being in Prison for a libel?—Yes.

Was it after that time that you lived with him five weeks?—I lived with him after the libel case for six or seven months before the other one.

When did they first come to you about this?—Saturday last.

Were not you talking to anybody before last Saturday about it?—No.

Who came to you?—A Detective of Bristol.

Did you see more than one Detective about it?—There were three came there.

Three Detectives?

The LORD CHIEF JUSTICE: Were they all three Detectives?—Yes, I believe they were.

Dr. KENEALY: Did they come to your own house?—Yes.

Did they bring you any photographs?—They showed me one.

Was that the photograph they brought you (handing it)?—Like that, but not quite so large.

I will show you another; was that the sort (handing another photograph)?—That is the one.

Was the name at the bottom?—Yes.

Did they tell you it was your husband?—They did.

Do you know the names of those three Detectives?—One was STILES. I do not remember the others' names.

Was a man of the name of WHICHER amongst them?—No, I did not hear the name.

Or CLARKE?—No.

They told you it was your husband and you said it was?—First they showed me the likeness and asked me did I know who it was; I said "I think I do see some resemblance." They said "Do you think it is your husband?"—And I said "Yes, I would not swear to his likeness, but if I saw him myself——"

At all events they said he was the man?—They did. It was the same Detective as took him in Bristol for the cheque.

That was the man we had the pleasure of seeing here, no doubt, a sharp-faced man?—Yes.

Did they take you into a private room yesterday, where all the Witnesses were?—This morning. I did not come up until this morning.

Were there a lot of Witnesses there this morning?—I do not know whether they were Witnesses, or not; there were several gentlemen there.

Did they show you several photographs there?—No, not one.

Did they take down your statement?—Yes.

Do you see the gentleman there who took it down. (The Witness pointed.)

I see you recognise him; that gentleman with the white hair, I suppose?—Yes. (Laughter.)

Did you and he have a bit of a talk about the matter?—A few words.

Re-examined by Mr. HAWKINS.

Do you mean the gentleman with white hair, or the gentleman without any?—I am told it was the one without any. (Laughter.)

The LORD CHIEF JUSTICE: You say they asked you whether it was not your husband, but I understood you declined to swear it your husband from the likeness until you had seen him? When did you see him?—Not till this morning. I saw him this morning here.

And when you did see him——?—I said that was him. I said that was the man.

Did you know him again?—Rather. (Laughter.)

Mr. Justice MELLOR: Have you any doubt about it now?—Not in the least.

A JURYMAN: Had your husband anything the matter with his hands?—With one of the little fingers. I cannot say which hand it was on; the joint was broken. He told me he did it in saving himself from the wreck of a vessel; broke his finger by it.

[Adjourned till to-morrow morning at 10 o'clock.]

ONE HUNDRED AND THIRTY-EIGHTH DAY.—WEDNESDAY, DECEMBER 10TH, 1873.

The FOREMAN OF THE JURY said he had been requested by his brother Jurors to state, in reference to the adjournment at Christmas, that it would be a great convenience to them all if the Court was to adjourn from Friday, the 19th, until the following Monday week.

The LORD CHIEF JUSTICE: We should prefer sitting until the evening of the day before Christmas, Wednesday, and meeting again on the following Monday week.

The FOREMAN: There are two or three members of the Jury to whom the interval I have been asked to name will be a very pressing time of business.

The LORD CHIEF JUSTICE: Oh! very well. Of course, we are bound to consider that fact. We are very sensible of the immense inconvenience this Trial must be to you all; and are therefore most anxious to meet your wishes in the matter. You wish that we should adjourn from Friday, the 19th, until the following Monday week?

The FOREMAN: Yes, my lord; one clear week. May we also suggest sitting at ten o'clock on Monday mornings, in future?

Mr. Justice LUSH: You do not go out of town now.

The FOREMAN: No, my lord.

The LORD CHIEF JUSTICE: I think we might take a middle course, and sit in accordance with our usual practice, at half-past ten o'clock on Monday.

The FOREMAN: Very good, my lord.

It was then arranged that the Court should at its rising on Friday, the 19th inst., adjourn until half-past ten o'clock on Monday, the 29th.

Mr. GEORGE JENKINS, sworn.

Examined by Mr. Serjeant PARRY.

Is your name GEORGE JENKINS? Are you clerk to Messrs. CORY Brothers?—I am.

Are they merchants and shipbrokers?—And colliery proprietors.

Where do they carry on their business?—Cardiff and London.

Now on the 4th July of this year do you remember a person calling at your office who represented himself as a Captain LUNDBAD?—Yes.

Where were they?—6, Crosby Square.

What did he say to you?—He represented himself as a Captain of the ship 'Amazon' then at Belfast.

He so represented himself; did he say anything further as to what his business was?—He handed me a letter of introduction

puporting to be from GUSTAV MELINE, the owner of the ship, of Gothenburg.

I do not know whether you have the letter?—It has since been lost.

Purporting to come from GUSTAV MELINE, Gothenburg, introducing Captain LUNDBAD to you?—Quite so.

Was there any request contained in the letter?—Requesting us to procure him a freight.

Any other request?—And concluding with another request to advance him money to the extent of £30 or £40, according to his requirements.

Is that the substance of what he stated to you?

The LORD CHIEF JUSTICE: That is the substance of the letter.

Dr. KENEALY: I beg your lordship's pardon. That is the substance of the letter, and you are giving us the whole of what passed between him and you?—He asked us for money.

The LORD CHIEF JUSTICE: What amount?—£30, my lord.

Mr. Serjeant PARRY: What occurred upon that?—I told him we did not know him.

Dr. KENEALY: Are we to have all this, my lord? I thought your lordship ruled yesterday that we were not to have all these things, but merely to confine ourselves to the interview.

The LORD CHIEF JUSTICE: This is the interview.

Dr. KENEALY: This is not the fact of the interview; it is more than that, and I understand your lordship's ruling to be, we were only to have the fact, and time, and place.

The LORD CHIEF JUSTICE: No.

Mr. Justice MELLOR: No independent matter which went to discredit the Witness can be admitted, but one is part of the interview itself, part of the *res gesta* in point of fact; it is part of the circumstances of the time he called, and that certainly we cannot exclude.

The LORD CHIEF JUSTICE: It would go very far to satisfy the Jury of the truth of the Witness's statement, or the contrary, as the case may be.

Mr. Serjeant PARRY: You were going to say that you told him.—I told him that his demand was irregular, inasmuch as they did not know him or the owner, GUSTAV MELINE, and I promised to communicate with Cardiff, our head-quarters.

Was any appointment made for him to call again?—On the following day.

That was on the 5th July?—That was on the 5th July.

Do you know a firm, Messrs. WINDSOR, SON, & GROOM, ship-brokers, New London Street.—I do.

Where do they carry on their business?—In the City—London-street, I believe.

Now only answer me this question, Yes or No. Did you, after this Captain LUNDBAD had left, go to them, and make some inquiries of them?—Yes.

The LORD CHIEF JUSTICE: Had LUNDBAD mentioned these gentlemen to you?—No, my Lord.

Mr. Serjeant PARRY: We shall call presently some of the firm.

Did Captain LUNDBAD come to you next day?—He did.

That would be Saturday the 5th July?—Saturday the 5th July.

Now what time in the day?—About ten or eleven.

In the morning?—In the morning.

What happened then?—We were convinced.

The LORD CHIEF JUSTICE: No.

Mr. Serjeant PARRY: I do not ask you what was passing in your mind, but LUNDBAD came between ten and eleven on Saturday the 5th July, to your offices; what did you say to him?—I asked him to wait. And then we sent for Mr. WINDSOR.

And then what happened?—Captain LUNDBAD went away.

The LORD CHIEF JUSTICE: Did he know you had sent for Mr. WINDSOR?—He suspected something wrong.

Tell us what passed.—No, he did not know, my lord.

Mr. Serjeant PARRY: How long did he wait before he went away?—It would be ten minutes.

When he went away, what did you say?—He said he would call again, I think.

Did he say within what time he would call?—In the course of the morning.

Did he go away?—Yes, he did.

After he went away, did Mr. WINDSOR come?—Yes.

Did then Captain LUNDBAD call at your office?—Not after that.

Have you seen him since?—I have.

When?—I saw him on Friday morning.

Mr. Justice MELLOR: Last Friday?—Last Friday.

Mr. Serjeant PARRY: Is that the man there (pointing to JEAN LUIE)?—Yes.

Are you quite sure of that?—Quite certain.

Cross-examined by Dr. KENEALY.

How long were you talking to him the first time?—About an hour.

And the second?—About a quarter of an hour.

Now look at that (handing the Chatham photograph). Is he the man who called on you?—Yes.

Dr. KENEALY: That is the Chatham one, my lord.

Was his beard like that?—It might be a little longer perhaps.

I am sure you will consider. Are you prepared to say the beard was longer than that?—I should not like to state either way. I think it was longer. My impression is that it was longer.

Do not mind your impressions of this man now, but carry back your recollection; do not suppose I think anything wrong about you, but carry back your recollection to the 4th or 5th of July, and tell me whether on the occasion on which you saw him the beard was not practically about what is represented there?—It might be a little longer.

What do you mean by a little—a quarter of an inch?—Something between this (referring to the photograph) and what it is now.

Would you say it was so much as a quarter of an inch longer when you saw him in July?—It might be that.

Further than that, I understand, you would not like to go?—No.

Now look at that; do you notice a very haggard, worn, woe-begone expression in those features?—I have looked.

Do you notice in the expression of that photograph a very haggard and woe-begone expression? Look into it.—I could not bind myself to the representation of the photograph.

The LORD CHIEF JUSTICE: Is not that the same thing as we decided yesterday—a matter for the Jury? There is the photograph, and if there be in it noticeable a careworn haggard expression the Jury will notice it as well as the Witness.

Dr. KENEALY: Does your lordship rule that the question is inadmissible?

The LORD CHIEF JUSTICE: I think so; because it is not for him to form a judgment on it, but for the Jury. He is not an adept in photography who can tell us anything in that art or anything represented by means of the photograph, but simply that from his recollection of the man who came to him, the man sitting there is that person; and anything that goes to shake that statement, or view, or opinion of his, is undoubtedly perfectly legitimate; but to show him a photograph and ask him whether there is not in the photograph some expression, when the Jury have the same means of judging as the Witness, and he has no means of judging beyond that which anybody else has, I do not see the Witness can be asked that.

Mr. Justice MELLOR: I think yesterday the rule, as far certainly as I was concerned, that was intended to be laid down was this—you may ask the Witness whether when he saw LUIE he had or had not a worn or haggard expression, but then as that photograph is brought from Chatham as being a representation of the man at the time he left Chatham, you may argue to the Jury it must be a different man, because in that photograph there is a different expression which you ask the Witness if he remembers. I think that is the only way in which it can be put myself.

Dr. KENEALY: Nevertheless it did occur to me yesterday, and I must confess that it does still, that it was fairer to the Witness to enable him to refresh his memory by looking at the photograph which was taken only recently.

The LORD CHIEF JUSTICE: You are entitled to ask him this most undoubtedly—Had the man you saw on the 4th and 5th of July a haggard, careworn, woebegone expression of countenance? It is open to you to contend because this man has not, and there is that expression in the photograph (you are right in saying that in the photograph from Chatham), the two people cannot be the same; but you cannot ask him what he saw in the man to whose identity he comes to speak.

Mr. Justice MELLOR: He can refresh his memory by handwriting or by something that he has done; but he cannot refresh his memory by a photograph made by someone else, and which he only saw a day or two ago.

Dr. KENEALY: The inconvenience of asking the question the Lord Chief Justice suggests is, that the Witness was involuntarily and unconsciously as it were passing his eye over the beard in this man, and undoubtedly he seemed to frame his answer according to what he saw there (I do not mean to say that he did it improperly); and if I took him seriatim through the features of LUNDBAD, as I say they existed on the 4th July, the Witness will refresh his memory by looking at LUIE, which seems to me inconvenient and unfair, and therefore it occurred to my mind that the fairest way is to let him look at the photograph.

The LORD CHIEF JUSTICE: You may say to the Witness—"I am going to ask you a question to which I must request an answer without your looking at the man;" that would obviate the inconvenience, and certainly that course you are entitled to take; but I entirely agree with my brother MELLOR, that you cannot ask this Witness to compare a photograph with a man whose identity is in dispute: that is for the Jury.

A JUROR: Did you see him with his hat off?—I did.

Dr. KENEALY: Are you in a position, before I ask you any further questions about the details of his personal appearance, to say, yes or no, whether you accurately recollect all the details of his features?—I am.

And that entirely apart from refreshing your memory by seeing him recently under his present circumstances?—I would not bind myself to any special features. I know the man. I cannot go into the question of details.

That is what I understood you just now you could do?—Then I did not comprehend your question.

You are not in that position?—I have a perfect recollection of the man.

You have a perfect general recollection of the man, may I say?—Quite so.

But you are not prepared to go into the details of his features?—I should not like to do so.

When was your attention first directed to this matter?—On last Thursday.

And who came to you about it?—I was at Hull at the time, and I received a photograph of a man.

From whom?—From our office.

Did you receive the photograph that is published in the windows? Was that the sort of thing you got (handing a photograph)?—No, that was not the photograph.

Was this the sort of thing you got?—No.

The LORD CHIEF JUSTICE: The one with the hat on? (It was handed to the Witness.)—That is not the one either.

Was it the Prison one without a hat?—No; I think I have it, my lord.

Dr. KENEALY: Had it been left at your office by anybody?—Yes.

Do you know by whom?—Some one on behalf of the Solicitor of the Treasury.

Have you got the letter that accompanied it?—I have.

By whom was the letter written?—My brother.

The LORD CHIEF JUSTICE: I do not think you have seen this photograph, Gentlemen, which the Witness got? (It was handed to the Jury.)

Dr. KENEALY: Did you come to town the same night, Thursday night?—Yes.

Whom did you first see connected with the Prosecution?—I saw Mr. POLLARD.

Did he bring you any photographs?—No.

Did you have any conversation with him about the matter?—To him I made the statement I had to make—once I saw the man.

Once you saw the man; what do you mean?—Saw LUIE.

Did you see LUIE before you had conversation with Mr. POLLARD?—Before making the statement which I signed.

Where did you see him?—I saw him in the passage, some corridor.

Did not anyone point him out to you?—No.

Who was with you?—There were a few persons there whom I did not know.

Were they Witnesses?—I do not know.

That you afterwards saw in the private room as Witnesses?—I could not say.

Did you never see them again, after seeing them in the passage on that day?—I did not pay attention to them.

Then you saw Mr. POLLARD; and how long was Mr. POLLARD in communication with you about the matter?—A few minutes.

Did he write down in the private room all you had to tell him?—The statement was written there.

In the private room?—I think so.

Were there a great many people there at the time?—Yes.

Upwards of thirty?—I could not say.

A large number?—No, not a large number; there were a few persons there.

I thought you said a great many people?—You said it, I think.

You adopted my words. Were there a great many people or not?—There were some people there.

The LORD CHIEF JUSTICE: How many do you think there were?—About twelve or fifteen persons, I should say, altogether.

Dr. KENEALY: And did you see the photographs lying about on the table?—I did not.

How long did you remain there in the room?—About half an hour or an hour altogether, it may be.

And did you see the people coming up to the table and their statements written down?—No.

No?—I did not pay attention to what was going on. I was attending to my own business.

Oh, yes, of course; was not that what was going on?—I could not say.

You could not say what was going on in the private room last Friday, where you stayed for an hour. Now do consider your answer. I am sure you intend to act with perfect fairness?—There were several groups of people; I was keeping to my own group. I had nothing to do with the others.

What group were you in then? Were you in a group of people?—I was, when talking to Mr. POLLARD.

That was not a group?—Well, there was a group of two or three people.

That is what you call a group of people?—Yes.

Did you see anybody else after that Friday with reference to LUIE?—About what?

About this inquiry as to LUIE?—No, not that I had any business with.

You seem a long while deliberating over that answer?—I thought your question was a very general one, so that I wanted to comprehend the full meaning of it. I have attended the Court since Monday, and of course I have seen a great number of new faces to me, if that is what you mean.

No, I said did you see anybody about this inquiry as to LUIE?—I was requested to attend the Court, and saw a great many, but I have had no conversation with anybody else.

No conversation with anybody else connected with the Prosecution since last Friday?—Not business conversation.

About LUIE?—About LUIE.

Have you seen CLARKE or WHICHER?—The first day.

Which of them?—I saw WHICHER, I think.

Where did you see WHICHER?—In the private room.

Was that before you had your conversation with Mr. POLLARD?—No, after.

—Did you have a conversation with WHICHER?—I was told it was Mr. WHICHER.

Did you have a conversation with him?—Not any general conversation about the Case.

Now attend. Did you have a conversation with WHICHER or not?—Yes.

Was that after you left the private room, or was it in the private room?—It may be after; it may be in the private room.

This was only last Friday?—It was of so little importance to me that there was nothing to pin my memory to it.

You see it might be of great importance to me, and will you tell me whether it was in the room or not?—I cannot. It might be in the passage; it might be in the room.

Can you tell me how long it lasted?—I have no distinct recollection of one special conversation with WHICHER. I was told it was WHICHER and we had a few words and I left him.

The LORD CHIEF JUSTICE: What were the few words? Let us have the mystery out.—My brother knew WHICHER, and said that was WHICHER, and we bowed and said a few words, but there was nothing more than that.

Dr. KENEALY: Nothing more than that?—Of course there was a conversation—a most insignificant conversation.

Do you mean that there was nothing said about LUIE in that conversation, and the photographs?—I should not like to pin myself to it, but nothing of importance.

You may think it not of importance, and I may. Was there nothing said in that conversation?—Not that I remember.

Then did you understand from your brother that he was acquainted with WHICHER before? He introduced you to WHICHER, as I understand?—I think he had made his acquaintance the day before.

This is, I suppose, before he wrote to you?—I could not say.

Did you see any other Detective about this matter besides WHICHER?—No.

Nobody else?—No.

Was that the only conversation you had with WHICHER?—Yes.

That was the only one?—On that day at any rate.

But had you any other day a conversation with WHICHER?—Well, I have met him in the passage.

Clearly understand, I do not mean "How do you do, Mr. WHICHER?" or anything of that kind, but with reference to LUIE and the photographs, and this matter?—No.

None ever after?—No.

Or anybody else connected with the Prosecution?—No.

Mr. WALTER JONES, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Clerk in the employment of Messrs. CORY Brothers and Company, No. 6, Crosby Square?—Yes.

Do you remember a person of the name of Captain LUNDBAD coming into your offices in July last?—Yes.

What day was it he came in July?—The 4th of July.

Was the gentleman who has just been examined present?—Yes.

Tell us shortly what did this Captain LUNDBAD say?—He said he was going to take the command of the ship 'Amazon' lying at Belfast, and wanted £20 or £30 to pay his passage and the crew.

To whom did he say that, to you or Mr. JENKINS?—To Mr. JENKINS.

What did Mr. JENKINS say to you, do you remember?—No, I do not know. He said he would inquire, and he sent a telegram to Cardiff about it.

The LORD CHIEF JUSTICE: But he did not tell LUNDBAD he would do that?—He said he would inquire. I do not know the exact words.

Mr. Serjeant PARRY: Only what passed between him and LUNDBAD, not what Mr. JENKINS did. As well as you remember, do you remember Captain LUNDBAD going away on that day?—Yes.

Was anything said about his coming back again?—He was to call again the next day while we made inquiry.

Was that said to him or not?—To him.

Did he call again the next day?—Yes.

That was Saturday the 5th of July last?—Yes.

About what time?—I suppose it was about ten or eleven o'clock in the morning.

What happened then?—I do not recollect the conversation.

I did not ask you; but did he wait a short time?—Yes.

Do you remember whether he was asked to wait or not?—We tried to detain him while we sent round to Messrs. WINDSOR, SON, & GROOM.

How long did he wait?—I suppose about ten minutes or a quarter of an hour.

What did he then say?—He said he was going out to dinner, and would return again shortly.

Did he ever return to your office?—No.

Have you seen him since?—Not till last Tuesday week.

Where did you see him then?—In one of the passages of this Court.

Is that the man (pointing to JEAN LUIE)?—Yes.

The LORD CHIEF JUSTICE: When you saw him in one of the passages of the Court, did you know him again?—Yes.

When you saw him in the passage?—Yes, my lord.

Mr. Serjeant PARRY: Now are you sure that is the man?—Quite certain.

Cross-examined by Dr. KENEALY.

Had you any business to attend to on the 4th of July, when LUNDBAD first called?—In what respect?

In any respect?—General office business.

Well, I thought so: were you keeping a book, or making entries or what were you doing?—Making a copy of a letter or something of that sort: I do not remember what I was doing.

It was none of your business, I suppose, to listen to the conversation between your master and LUNDBAD?—No.

You were attending to your own employment?—Yes.

And continued to attend to it while LUNDBAD was there?—Yes, I could not hear what he was saying.

Did you go on with your own employment, or not?—Yes.

And did not step, I suppose, for the fun of hearing?—I may have stopped a little while.

I mean you do not profess to have suspended your business for the purpose of hearing this conversation between the man and your master?—On Saturday I did.

I am coming to Saturday: Friday first. Is that so, that you did not suspend your business, but went on with your proper work?—Yes.

Now what is it you did on Saturday; did you suspend your business while he was there or not?—Yes, I was listening principally to him.

Then I suppose you remember all the conversation, do you?—I do not remember, because I had no idea I should be brought forward.

Now are you prepared to swear that there was any further conversation between the two on Saturday than Mr. JENKINS telling him to wait for a little while?—Yes.

There was?—Yes.

What?—I do not know, I cannot recollect.

Why you were listening to it you say?—But I do not recollect what he said.

Did you take any notice of what was said?—At the time I did.

Have you forgotten it?—Yes.

Now, when were you first talked to about this matter of LUIE?—It was on the 2nd of December.

Were you in Court when your master was examined?—No.

On the 2nd of December you say you first talked to him about this?—Yes.

Who was it first talked to you about it?—A gentleman was sent down to the office from this Court

We know, and this gentleman seems to have a name. Had he a name?—I do not know his name.

Have you seen him here?—He is not in Court now.

Is he what is called a Detective?—I do not know what he was.

Have you seen him about the passages here?—Yes.

Do you know whether he is Detective CLARKE or Detective WHICHER, or any other Detective?—I do not know who he is.

He is not any of those gentlemen at this table?—No.

Is he a man who wears a grey coat?—That I do not know.

Why, you do not seem very observant I am afraid.—He is an elderly gentleman, who has grey whiskers.

Has he white hair?—Yes, grey hair.

White or grey hair, which?—Grey hair.

When did you first see him, did you say?—On the 2nd of December.

Where was it?—At the office.

How long were you talking to him?—About five minutes.

Did he bring you any photograph?—Yes, he showed me a photograph.

One?—Yes.

Was that a photograph with a bald head?—No, with a hat on.

Were you ever shown a photograph with a bald head?—No.

Never?—No.

Were you ever shown a photograph like that (handing one)?—No.

Did he take down what you told him in writing? did he put questions to you?—No; he asked me if I recollected the man, that is all.

Did he write it down?—No.

Did you talk to him after that day?—Not about that that I know of.

Did you talk to him ever after that day?—Yes.

When?—The next day.

Where?—In this Court.

Were you in the private room?—Yes.

How long were you with him in the private room?—I might have been there half an hour.

Or an hour?—No, I do not think so. I went to Holloway Prison after that.

Whom did you go with to Holloway Prison?—With the same gentleman. I do not know his name.

Had you a bit of talk about it on your way?—No.

Come, remember.—Because I went with Mr. JENKINS; he was talking to him on the way.

Was not the talk on the way all about this business?—Talking about the TICHBORNE Trial in general, not about this.

But did not he talk about LUIE also?—No, I do not think so. It was only on Friday. Are you prepared to say whether he did, or not?—No, I am not.

Were there any other persons at Holloway, when you got there, for the same purpose as you were?—No.

Did they write down on Friday what you said?—Yes.

What, this gentleman with the grey hair?—No.

Who else?—I do not know his name.

Is he here?—He is not here now.

Have you seen him since you came into Court?—No, I saw him this morning.

The LORD CHIEF JUSTICE: Must not we take it for granted that one of the Solicitors in the ordinary discharge of a Solicitor's duty did take down his statement? Does it signify one rush whether it was taken by Mr. STEPHENSON, Mr. POLLARD, Mr. BOWKER, or anybody else?

Dr. KENEALY: I think it does my lord, or otherwise I would not have asked the question.

Mr. HAWKINS: He certainly would not have been called if his statement had not been taken.

Mr. TAYLOR (Juryman): Did either of the Solicitors tell you what to say?—No.

The LORD CHIEF JUSTICE: *That is really the question.*

Mr. Serjeant PARRY: *That is the meaning of it.*

Mr. TAYLOR (Juryman): *That is what the questions convey.*

Dr. KENEALY: *No; that is not the meaning of my question, my lord.*

The LORD CHIEF JUSTICE: *I say that that is the question, what it comes to practically.*

Dr. KENEALY: I assure your lordship it is not; my object is to show that these Witnesses, one after the other, have been talked to, and their impressions have been so formed.

The LORD CHIEF JUSTICE: Hitherto you have signally failed in showing that. I cannot help thinking that our time has been most sadly wasted.

Dr. KENEALY: That will be for the Jury whether I have failed or not. Your lordship is perpetually insulting me from the Bench. I do not know why.

The LORD CHIEF JUSTICE: What do you say, sir?

Dr. KENEALY: I said I was perpetually receiving insults from your lordship.

The LORD CHIEF JUSTICE: Sir, do not use that language to me, because I will not bear it.

Dr. KENEALY: I consider that your lordship has insulted me, by what you have said to me now and other things of the same sort which your lordship has said in open Court.

The LORD CHIEF JUSTICE (warmly): Sir, you have no business to address such language to the Court. Take into account the numerous observations which you have made in the same spirit. There is no member of the Bench to whom you have not used unbecoming language.

Dr. KENEALY: I have been insulted almost every day.

Mr. Justice LUSH: It is quite time that you should end this cross-examination, which has wasted a good deal of time.

Mr. TAYLOR (Juryman): And which has no effect on the mind of the Jury whatever.

Dr. KENEALY: I am sorry to hear you say these things, my lord. The object is simply what I have said. Without casting any imputation on those Witnesses, I ask the Jury to suspend their judgment on this issue for the present, and I may surely ask the Jury to believe that a number of persons have been talking to various Witnesses and showing them photographs, conveying impressions to their minds, and making a gradual influence on the minds of the Witnesses.

Mr. Justice LUSH: But when you hear a Witness has formed his opinion before he has talked to anyone, what room is there for that?

Dr. KENEALY: I have no doubt that the Witness is conscientiously of opinion that that is so, but I ought to be allowed to get out that upon which I can base an argument to the Jury.

Mr. Justice LUSH: I agree with what has fallen from the Bench and the Jury too, that there has been a great deal of waste of time.

Mr. Justice MELLOR: I very much regret to hear what you said to the Lord Chief Justice, for this simple reason, that it is the first time I ever heard a Judge was not at liberty to interpose a question of that sort when Counsel repeated his question so often. I do not mean to impute anything wrong in the questions you put, but I am bound to say that the Judge has some duty to perform with reference to that matter.

The LORD CHIEF JUSTICE: I forget how many Witnesses have been called with reference to this issue, and the same series of questions have been put to them all, and not one single question has elicited anything to shake one's confidence in their statement that when they saw LUNDGREN they formed their opinion right or wrong, that he was the man, and then having done so, they make their statements, or having seen a photograph at Cardiff, they make their statements, and that is reduced into writing in the ordinary way for the inspection of Counsel. I have not heard a single answer given by a Witness which could lead one to suppose for a moment that the Witness had formed his judgment by reason of what had been said to him by the Attorneys, Solicitors, or Detectives or anybody else; therefore I could not at the end of these many days that this inquiry has been going on, avoid, in passing, giving my opinion that time has been wasted by these enquiries, and it is the opinion of my learned

brethren as well as of the Jury. It is the duty of the Judge to interpose and protect the public against the waste of public time, and it is not consistent with decency that Counsel should tell a Judge that he insults him when he makes that observation. (Applause.)

Dr. KENEALY: My lord, I must exercise the best discretion I can in the Case. Probably my discretion may be indiscreet, but I must exercise it in the best way I can.

The LORD CHIEF JUSTICE: Certainly, but it is not discreet or decent to make such an observation to a Judge as you have just now made to me.

Dr. KENEALY: My lord, you have repeated that, I think, frequently, and have addressed me frequently in the same terms. I must only endure it from your lordship. All I can say is my opinion is not altered. I am sorry for it.

The LORD CHIEF JUSTICE (with emphasis, and striking the desk before him as he spoke): I can only say, during the seventeen years I have sat on this Bench, I have never had an unpleasant word from Counsel before I had the misfortune to be presiding in this Trial.

Mr. Serjeant PARRY: That is so.

Dr. KENEALY: My lord, I have done all I could do to avoid it; that is all I can say.

The LORD CHIEF JUSTICE: *That is the most daring assertion I have heard yet.*

Mr. Justice LUSH: I cannot help adding this: when I first heard what I did from you I did so with astonishment that any gentleman at this Bar should so misconduct himself, but I must add now that the offence is aggravated when it is committed by a gentleman holding the office of one of Her Majesty's Counsel, and, therefore, one who owes special allegiance to Her Majesty's Court.

Dr. KENEALY: Your lordship has twice reminded me of my holding the office of one of Her Majesty's Counsel.

Mr. Justice LUSH: Yes, because I think it an aggravation when done by a gentleman in that position, who should set an example to the Bar.

Dr. KENEALY: My lord, as you talk of allegiance, my first allegiance is to Duty.

Mr. Justice LUSH: But some to us.

Dr. KENEALY: Certainly, and I have shown it; but I have borne what, I think, no other gentleman in Westminster Hall has been subjected to.

The LORD CHIEF JUSTICE (energetically): Yes, because you have brought it on yourself.

Mr. Justice MELLOR: I will only say that if this is repeated in any Trial, the administration of justice will be seriously impeded. I remember very well that one of the circumstances that struck that distinguished Advocate BERRYER, when he was here, was the relation between the Bar and the Bench, which, he said, in his opinion, was inestimable, because business went on smoothly, but I say it cannot go on smoothly if a Judge is to be treated in the way you have more than once treated, not only the Lord Chief Justice, but every Judge on the Bench.

Dr. KENEALY: My lord, I have been treated as no other Counsel ever was.

The LORD CHIEF JUSTICE: Because, sir, you have brought it on yourself. Counsel cannot be allowed to violate the ordinary system according to which the administration of justice is conducted, and to outrage all rules of propriety, and not bring down on himself the censure of the Bench. The Judges would be wanting in their duty if they did not observe on conduct of that description. (Suppressed cheers from the Bar.)

Dr. KENEALY: My lord, I am always anxious to pay deference to the censure of the Bench, provided it is conveyed in a form different from that in which your lordship has conveyed it to me; but your lordship has over and over again, and from day to day, conveyed that censure in the bitterest language that could be selected.

The LORD CHIEF JUSTICE: Oh, no!

Dr. KENEALY: I am sorry to say that is my opinion, and I cannot alter my opinion.

The LORD CHIEF JUSTICE: Very well, then, let us go on.*

* By this time the whole Bar, and those who frequented the Court, knew that the Three Judges had made up their minds to get Dr. KENEALY disbarred when the Trial had finished. Hence Mr. MOY THOMAS, the Summary Writer in the 'Daily News,' in reporting this day's proceedings, says:—"The bitter discussion, the severe rebuke administered by each of the Judges in turn, *and the significant and ominous remarks* of the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH, upon the obligations imposed by the relations between Counsel and the Bench, are not of a kind which can be abridged; and they will be found at full length in our report." Dr. KENEALY had had frequent hints before this of the conclusion to destroy him, at which the Judges had arrived: but he treated them with contempt, as he could not believe that they could possibly succeed in so infamous a design. He regarded them as conveyed merely to intimidate and to deter him in some measure from doing his duty, and behaving with right independence. He did not, therefore, alter his tone in the least, or abandon his Client, as it was now more than ever impressed upon him by outsiders that he ought to do. These outsiders belonged principally to the Bar—who all knew, or guessed what was brewing.

The JURY: Are you going to call any other Witnesses to this matter?

Mr. WILLIAM HENRY WINDSOR, sworn.

Examined by Mr. Serjeant PARRY.

Are you a member of the firm of WINDSOR, SON, and GROOM, Ship and Insurance Brokers, No, 4, New London Street in the City of London?—Yes, CHARLES WINDSOR, SON, and GROOM.

Now on the 1st of July last, do you remember a person coming to your office in New London Street, with reference to the charter of a ship?—Yes, but not with reference to the charter of a ship.

Whom did he represent himself to be?—He represented himself to be Captain STROM.

Did he bring with him a letter?—He did.

Have you that letter?—I gave it to Mr. POLLARD, I think.

I have no doubt we shall have the letter in a moment. Did you read the letter?—Yes, I did.

After that, did you speak to Captain STROM?—Yes.

What did you say to him, or he to you?—I said, "You are Captain STROM?" He said, "Yes." I had read the letter, and I said, "Well, how much will you require?" So he answered and said something about not knowing what the fare was from Dublin, but he thought from £20 to £25 would be sufficient.

The LORD CHIEF JUSTICE: What led to the question about Dublin?—The contents of the letter, my lord.

Mr. Serjeant PARRY: The letter is annexed to an affidavit in this Court, my lord, I think. I do not know whether it was filed.

Mr. Justice LUSH: It was filed the other day. (The letter was handed to the Witness.)

Mr. Serjeant PARRY: Is that the letter?—Yes, that is the letter.

Mr. Serjeant PARRY: "Gothenburg, 26th June, 1873.—Messrs. C. WINDSOR, SON, and Co., 4, New London Street, London.—Gentlemen, Captain N. STROM, who is the bearer of this, is on his journey to London for to take charge of the 'Amazon,' of which I am now the sole owner, and as I am desirous to obtain for the ship an immediate employment, I will feel greatly obliged if you be kind enough to send me by return the freights that would be most suitable, and I will telegraph you in return thereon. The reason I am addressing myself to you is in consequence of the informations I received from my cousin, Captain PRITZ, of the 'Montrose.' I should be most glad to obtain for the 'Amazon' a freight something similar what the 'Montrose' has, and if so, send me charter. As Captain STROM has with him eight men for to complete the crew, I shall feel obliged for you to advance him the necessary money he may require for the journey, &c., and he will remit you the amount on his arrival in Dublin. I have given Captain STROM to understand that the chartering of the 'Amazon' will be conducted by myself, so there need be no delay for his proceeding at once. If you should think that the petroleum answer purpose inform thereof. Would it be advisable under present circumstances to take a coal freight? I read that vessels are to be subject of survey. Is it applicable to our ships?—I remain, gentlemen, your obedient, C. PRITZ, pro E. RINAN & Co."

Then you spoke to him; he said he did not know the fare to Dublin, and he wanted about £20 to £25?—Yes.

What further passed?—I told him he had better take sufficient or he might stick half way, and it was then decided he was to take £30.

I did not ask you what you said, but did you speak to your father, Mr. CHARLES WINDSOR, about this transaction, advancing the £30?—No, I do not think I spoke to him. My father came out and spoke to me.

Was there something said between you and your father about it, either his speaking to you or you to him?—Yes.

The LORD CHIEF JUSTICE: Was that before STROM left?—Well, after this conversation about the £30, I had a further conversation with Captain STROM with reference to freights and chartering the ship or supposed ship.

Mr. Serjeant PARRY: And what did you do then?—Captain STROM told me he had nothing to do with chartering the ship; that these people in Gothenburg would manage.

Did you then remain in the office, or what?—I went into the outer office for the purpose of leaving our offices, and leaving Captain STROM and my father and Mr. GROOM in the private room, and then my father came to me and spoke to me.

Who is Mr. GROOM?—He is my partner.

I do not know whether you saw Captain STROM after that day?

The LORD CHIEF JUSTICE: Had we not better finish that day first?

Mr. Serjeant PARRY: Yes. Did you do anything further with reference to Captain STROM on that day?

The LORD CHIEF JUSTICE: But his father must come out. Don't tell us what you said, but did you and your father have any conversation with reference to this matter?—Yes, we did.

Mr. Serjeant PARRY: Tell me, if you please, what you did or said to Captain STROM?—I did not speak to Captain STROM after having left the private room.

Mr. Justice LUSH: Did you not go back?—No, I left the office.

The LORD CHIEF JUSTICE: Your father came out and had

some talk with you about the matter?—Yes, and Mr. GROOM likewise.

Mr. Serjeant PARRY: You said you came into the outer room, and left your father and Mr. GROOM with Captain STROM?—Yes.

Did you see Captain STROM again that day?—Yes. I saw him on the staircase as I was coming back to the office. I passed him on the stairs.

How long had you been absent before you returned, and he passed you on the stairs?—I should say about ten minutes.

Did you ever see him after that until recently?—No.

When did you see him again recently?—I saw him again the first time after that, last Tuesday week.

Is that the man you saw (pointing to JEAN LUIE)?—Yes.

Now where did you see him?—I saw him first sitting down on the bench outside here.

Did you or not then recognise him as the man who had passed as Captain STROM?—Yes, I recognised him then. He was sitting with his wide-awake on—a felt hat—and my impression is that he recognised me.

The LORD CHIEF JUSTICE: Never mind that.

Mr. Serjeant PARRY: Did he do anything?—I saw from the look of the man's eye that he recognised me as I passed.

Then I do not know whether you afterwards saw him in any other room or no?—I then asked one of the policemen here for Mr. POLLARD.

And you saw Mr. POLLARD and made your statement?—I saw the man in Court after that, the same morning.

Now when he was at your office, I suppose you saw him without his hat?—Yes, and he had a cap on too when he first came in.

Are you quite sure he is the same person?—Quite certain.

Did you after this go to Gothenburg yourself?—Yes.

Did you see Messrs. RINAN & Co.?—Yes.

Cross-examined by Dr. KENEALY.

As I understood you, you only saw the man there that day?—No.

Could you give me any idea at all how long he was in conversation with yourself?—Well, I should say about twenty minutes.

And from that time, I suppose, up to when you saw Mr. POLLARD you had no reason to recur to the transaction?—Oh! decidedly I had reason to recur to the transaction. I called on Messrs. RINAN & Co. in Gothenburg.

I mean with the exception of that you had no reason?—I have spoken about it constantly since that.

Did you ever speak to the police about it?—No.

A JURYMAN: Was the £30 advanced?—No.

Mr. Serjeant PARRY: I am going to call another Witness who will prove what passed after this gentleman left.

Dr. KENEALY: How did you happen to come down to the Court yesterday week?—I read the evidence of Mr. COBETT and those two or three other gentlemen who were examined on Monday, in the 'Evening Standard.'

In consequence of reading their evidence you came to the Court?—I came to the Court.

Did you read a description of him in their evidence?—Yes.

And did the man you saw agree with their description?—Yes, to a certain extent, their description was not very full.

What?—I do not think their description was very full.

But so far as it went he agreed with their description?—Yes.

How long were you with Mr. POLLARD?—Do you mean on the Tuesday?

Yes?—An hour or an hour and a-half, I suppose.

Talking over the matter?—Yes, I made an affidavit.

Were you talking over the matter during that time?—Yes.

Did he show you any photographs?—No.

Were you ever shown any?—Yes.

By whom?—I saw them in the shop window.

I mean, did any person show you any photographs?—No, no one showed me any, except some one went with me to this shop.

Who was that?—I really do not know his name; one of those gentlemen who were examined on Monday, when he returned from Court.

Have you ever been shown the bald photograph?—No, this was a photograph with a wide-awake on.

Re-examined by Mr. Serjeant PARRY.

Did you or not recognise that photograph when you were with this gentleman?—There was a likeness; I would have sworn to the man from the photograph.

The LORD CHIEF JUSTICE: Did you observe in the man at the office, and whom you saw, that he was bald?—Oh yes! He sat nearly all the time without his hat.

And you could see that he was bald?—Yes.

That he had no hair on the top of his head?—Exactly so.

And did he speak in a foreign accent?—Yes, he spoke broken English and Swedish.

Did you speak Swedish?—Yes, I spoke Swedish, but he answered in a mixture of broken Danish and Swedish.

You know Danish, do you?—I know the difference between Danish and Swedish. I speak Swedish.

Mr. Justice LUSH: Have you heard him speak since?—I heard him say, "I do not know you," to one of the Witnesses, and that is all.

Did you speak to him yourself when you saw him in the passage the other day?—No.

Mr. Justice MELLOR: You said you thought it was a likeness. You did not recognise him exactly by the photograph? How long after you had seen the photograph was it you saw the man himself?—The next morning. I recognised the photograph, but said I should not like to swear to the man without seeing the original, the likeness was not sufficiently good; it was flattering; especially as he had his hat on, and I had seen him without his hat.

When you did see him had you the slightest doubt he was the same identical man?—Not the slightest.

A JURYMAN: Did you recognise the voice?—He only said, "I do not know you." I should not like to say I recognised the voice from those words. I recognised the same foreign accent.

Mr. HENRY EDWARD GROOM, sworn.

Examined by Mr. Serjeant PARRY.

Are you a partner in the firm of Messrs. WINDSOR, SON, and GROOM?—I am.

Of New London Street in the City?—Yes.

On the 1st of July of this year do you remember a person representing himself to be Captain STROM calling at your offices in the City?—I do.

Was Mr. WINDSOR, who has just been examined, present?—He was.

Did you hear what passed between him and this Captain STROM?—I did.

What in substance was it that passed?—After the letter had been read, Mr. WINDSOR said "What money do you require?" and he said "I do not know exactly the amount," not knowing what the fares were; and he said "I suppose about £20 would be enough." Mr. WINDSOR said "You had better take enough," and a receipt was drawn out for £30. The man's manner was very confused, and I went out of the private room and spoke to Mr. WINDSOR, junior.

Do not tell us what you said; was that in the outer room?—In the outer room.

What did you do after that?—We returned into the private room and made some inquiries of the man.

What were they? just tell us.—The first of July was Tuesday, and I asked him how it was that he came to us first on Tuesday, although the Gothenburg steamer arrives on Monday, and where he had been in the meantime. He replied, "We did not come over by steamer from Gothenburg to London, but viâ Hull and Hamburg." We then asked him where the crew were; and he said at Euston Square Station.

The LORD CHIEF JUSTICE: Where did you understand the ship to be?—He represented as well as the letter that the ship was in Dublin.

And the crew at Euston Square Station?—Yes.

Mr. Serjeant PARRY: He said he had brought the crew over from Hamburg to Hull.

The LORD CHIEF JUSTICE: Did he say so?—Yes; and that is so very extraordinary a thing on account of the extra expense.

Mr. Serjeant PARRY: When he told you that the crew were at Euston Station, what further happened?—We said "The money here taken out of the cash-box has been fetched for another Captain."

Who said so?—Mr. CHARLES WINDSOR.

To whom did he say that?—To Captain STROM; that the money was brought from the bank for another Captain, and it was necessary to send out for some more, the object being to obtain a little delay.

The money had been taken out of the cash-box then, for the purpose of being given to Captain STROM?—Taken out of the cash-box and a receipt written out. Mr. WINDSOR, junior, then went out of the office altogether to make enquiries, and Captain STROM got very fidgety. Mr. WINDSOR, junior, did not return to the private room; the object of his going out was to see one of our neighbours who had been victimised in the same manner, and see if he could identify this man as the party.

The LORD CHIEF JUSTICE: How long had he been gone?—It was about ten minutes before Mr. WINDSOR returned.

He came back, did he?—He came back as Captain STROM was going down the stairs.

You say after he went out to make enquiries you saw he became fidgety?—Yes.

Mr. Serjeant PARRY: Mr. CHARLES WINDSOR had said to him he must send to the bank for more money?—Yes.

What was afterwards said to him, or what did he say?—Captain STROM said "I have not broken my fast to-day. I will go out and get something to eat and return in half-an-hour."

Did he go out?—He went out.

And Mr. WINDSOR, junior, came up the stairs while he was going down?—While he was going down the stairs, Mr. WINDSOR, junior, came up and came into the office.

Did he ever return to your office?—Never.

When did you see him again?—On Tuesday week last, in the morning.

Where?—I saw him pass through the passage into the Court, and I saw him also in the Court, and I have seen him several times since.

Did you, when you saw him in the passage and passing into the Court, then recognise him again?—At once.

As Captain STROM?—One of the police was taking me into the Court to identify him, and I said, "There is the man," and he passed me.

Have you any doubt that that is the man (pointing to Jean Luie)?—Not the slightest doubt.

Cross-examined by Dr. Kenealy.

Did you ever see him but on that one occasion when he called on you in July?—Only on that occasion.

And you were not the first gentleman who were having personal communication with him; did you yourself have any personal communication with him, or did you leave it entirely to Mr. Windsor?—I addressed the man also.

But the bulk of the conversation was conducted by Mr. Windsor?—Well, it was a mixed conversation joined in by all of us.

Have you been reading the description—the one given in the newspapers?—I have read a description of him.

Have you read any of the paragraphs that appeared about his various convictions?—No; I have no remembrance of that.

Do you remember the paper in which you read the description of him? Was it the 'Evening Standard'?—In the 'Evening Standard'; and the description about the 'Amazon' struck me most.

Did you read in the 'Evening Standard' an account of the previous delinquencies which were attributed to this man?—No; I have no recollection of it.

At all events, may I take it from what you read in the paper you had then a strong impression that he was the man?—No; I had not a strong impression that he was the man.

Had you any impression that he was the man?—I thought he might have been the man.

And were determined to satisfy yourself by coming down the next day?—I went up to see the photograph on the Monday evening.

After reading the newspaper?—After reading the newspaper.

Was that one of those exhibited in all the shop windows?—It was the one with the wide-awake on.

And then did it strike you that that photograph resembled the man to whom you had been talking in July?—There was a resemblance, but very flattering.

Do you distinctly remember the features of the man you talked to in July?—Yes.

Or have you merely a general remembrance of him?—I distinctly recollect his face and his head, his peculiar head and his beard.

Was his beard as long then as it is now?—Much shorter.

Very much shorter?—Much shorter.

I am asking you, very much shorter?—I can hardly say the distinction between "much" and "very much."

Cannot you? Was not it very much shorter?—It was about so thick, and there were no straggling hairs, but quite like clipped; it was very even.

No straggling hairs, but looked clipped and even?—Yes.

Have you been shown any of these photographs?—I have seen no photographs except the ones in the shop windows.

Have you ever seen the one with the bald head?—No.

Have you ever talked to more than one of the lawyers about the Case?—Mr. Pollard took my statement, and the gentleman that sits by him was present.

And was that the only occasion on which you had a conversation about your evidence?—Only on that Tuesday.

The Lord Chief Justice: You have mentioned the face, the shape of the head, and the beard; did you observe whether he was bald or not?—He was.

I mean the man you saw in the office?—He was, decidedly.

Mr. WILLIAM MATTHWIN, sworn.

Examined by Mr. Hawkins.

Are you a member of the firm of Joseph Heald & Co., Newcastle?—I am.

You had at one time, I think, a Mr. Trana in your employ at Newcastle?—Yes, we had.

Did he afterwards leave you to go into the office of John Lundgren & Co., of Hull?—He left our office for the purpose of going there.

Do you remember in the month of October, 1865, any person calling at your office?—Perfectly.

Was that on the evening of the 11th of October, and after your foreign department had closed?—It was.

Did that person make any inquiry after any particular Clerk in your house?—He had been inquiring at the counter for one. I was writing in the private office and heard a noise at the counter, and I went to hear what it was, and he wanted our Scandinavian Clerk.

The Lord Chief Justice: Who was the Scandinavian Clerk?—A Clerk we had called Giemre.

Mr. Hawkins: Tell us now what occurred?—I went to the counter to ascertain what he wanted, and he said he was a foreign Captain having a ship at Lowestoft.

Did he mention what country he was from himself?—I really forget whether he mentioned it that evening or not. I think not, nor did I inquire the name of the ship.

Did he say any more about the ship at Lowestoft?—He said he had just discharged the ship at Lowestoft and wanted to charter one for the Mediterranean.

What did you say to him?—I said to him that the foreign department was closed altogether. The merchants had left. Nothing could be done that night; and he must come back in the morning.

Did he return on the following morning?—I appointed ten; but he did not turn up till between eleven and twelve.

Now, what was done or said the following morning?—He wanted to charter for Barcelona; and we instructed one of our chartering Clerks to go round among the merchants and obtain one.

Did he mention the name of the vessel?—The 'Margherita.'

Ultimately did you effect the charter-party?—We did with Messrs. A. P. Harrison and Co.

Did he give his name?—He signed the charter-party as Captain Grundlund.

After the charter-party had been signed did he make any application for money?—He did not make any application direct to me, but to one of our foreign Clerks.

Mr. Justice Mellor: Were you present?—I was in the foreign office. The foreign Clerk came to me and said he had asked an advance, and asked whether he should have it.

Mr. Hawkins: Upon that being told you by the Clerk did you ask him any questions?—I asked him why he wanted the money, as he had just discharged a cargo at Lowestoft.

What did he say to that?—He said he had his owners' instructions to remit the whole of the inward freight home, or that the whole of the freight was to be remitted home, and to draw on the outward freight for his disbursements.

Did you upon that representation make him an advance of £12?—We did.

After you had made that advance were any circumstances communicated to you which induced you to telegraph to Lowestoft?—Yes, circumstances came to me, and I did telegraph to Lowestoft.

Were you able to get any tidings of the 'Margherita'?—I telegraphed to Mr. Small whether such a vessel had been to Lowestoft or was at Lowestoft, and he telegraphed back "No."

The Lord Chief Justice: Did you ask whether she had been or was at Lowestoft?—I thought she might have left, therefore I put it both ways.

Mr. Hawkins: After you had received this intelligence, about the 'Margherita' not being at Lowestoft, did one of your Clerks, Mr. Todd, communicate to you anything respecting Grundlund?—Not until the Saturday morning, the 24th of October.

Did you learn from Mr. Todd that Captain Grundlund was on the quay at Newcastle?—I did.

And did you go down to the quay?—I did not; I sent Mr. Todd down with one of our other Clerks.

Was he then arrested by your instructions?—He was brought up to the office; he came very unwillingly; we had to threaten him with a policeman; but he came up to the office, and I gave him into custody.

Was he committed for Trial at the Newcastle Sessions?—He was.

Did you appear as a Witness against him?—I did.

And he was convicted?—He was.

Mr. Hawkins: My lord, I hand in the certificate of the conviction.

Master Cockburn: This is the Certificate:—"Newcastle-upon-Tyne—To wit—I hereby certify, That at the General Quarter Sessions of the Peace of our Sovereign Lady the Queen, held at the Guildhall, in and for the town and borough of Newcastle-upon-Tyne and county of the same town and borough, on the third day of January, in the year of our Lord, one thousand eight hundred and sixty-six, Peter Petersen, alias Peter Grundlund, was indicted for that he, on the twelfth day of October, in the year 1865, at the parish of Saint Nicholas, in the town and borough aforesaid, and the county of the same town and borough, unlawfully, knowingly, and designedly did fasely pretend, to one William Matthwin, that he, the same Peter Petersen, alias Peter Grundlund, was the captain of a certain ship or vessel, called the 'Margaretta,' then lying at Lowestoft, by means of which said false pretence he, the said Peter Petersen, alias Peter Grundlund, did then and there unlawfully obtain from the said William Matthwin twelve pounds, with intent to defraud; whereas in truth, and fact, the said Peter Petersen, alias Peter Grundlund, was not then the Captain of the 'Margaretta,' then lying at Lowestoft, against the form of the statute in such case made and provided. And that the said Peter Petersen, alias Peter Grundlund, was thereof duly convicted, and thereupon ordered and adjudged to be imprisoned and kept to hard labour in the House of Correction for six calendar months, as appears by the Records of the Court in my custody. And I further certify that the said conviction is in full force, strength, and effect, and not in the least reversed, annulled or made void.

"Given under my hand this sixth day of December one thousand eight hundred and seventy-three.

(Signed) "JOHN CLAYTON,

"Clerk of the Peace for Newcastle-upon-Tyne."

Mr. Hawkins: Have you since, within the last few days, seen Captain Grundlund?—I have.

Where?—Here, in one of the rooms of the Court.

Do you see him in Court to-day?—I do.

Is that the man (pointing to Jean Luie)?—It is.

Snan Hotel
Alresford.
thants
July 7/67

Madam I have not
received a letter from
you But I will send
you money up by post
If you will send me
Ostons information and
all my letters, or If you
come to Croydon with
them I will pay you
two hundred pounds has I
do not wish my
affairs to be known
to any one but my
self please bring
all to me and I will
do more for you
than this

Yours truly
R C d Tichborne

FACSIMILE OF FORGED PITTENDREIGH LETTER, JULY 7TH, 1867.

Cross-examined by Dr. KENEALY.

I suppose you never saw him between October and the time he was tried?—Not since the Trial until Monday morning.

And after the Trial until Monday morning you never saw him until you saw him here?—Until I saw him here.

What first attracted your attention to him recently? Was it reading something in the newspapers?—If I must answer the question candidly, I should say it was LUIE'S evidence about the matter. I have always been curious about the matter.

You have always been curious about the matter, and always suspicious about it?—Yes, and so much so that I often made the remark to several of my friends at Newcastle that I would like to see the man LUIE.

Then, did reading his evidence give you an impression that he was the man you had prosecuted in 1866?—After reading Messrs. HOFFMAN and SCHENCK'S evidence in the newspapers I found I could get a portrait, and I sent a Clerk for one, and by that I identified the man.

That is not an answer to the question I put to you at all, which was this—Did reading LUIE'S evidence give you an impression that he must be the man you prosecuted in 1866?—I thought it was most likely he would be.

From simply reading his evidence?—Not simply reading his evidence: but when I had to get the Inspector there to take the charge, his presence was so bold, and his averments so strong that he was not the man, that I was cautioned several times by the Inspector, if it was the Inspector, to be careful what I did, lest I should be giving the wrong man in custody; but I persisted.

Mr. Justice LUSH: You say when you took him up he asserted he was not the man?—No; when I gave him into custody, the man at the Police Station, if he was the Inspector, I had a difficulty in getting to take the charge, because this man's front was so bold that he was some one else, and gave his name as PETER PETERSEN, that the Inspector cautioned me several times. "Be careful, Mr. MATHWIN, what you do, because you may get yourself in difficulty;" but I persisted, and it was not until he was taken that that document was found on him.

Dr. KENEALY: Then that circumstance, reading his evidence, gave you an impression in your own mind that he must be the man?—So clearly, that I wished to see him.

You took no steps to see him between last October and a few days ago, did you?—None at all.

And you were thinking the whole of that interval that he must be the person?—I did not say he must be, but simply made a remark to several friends that I would like to see LUIE; that was all.

And yet you made no communication to anybody concerning your suspicions or impression?—Not until last Tuesday.

Not until reading the evidence?—Messrs. HOFFMAN and SCHENCK'S evidence. Not from the evidence alone, but I tell you that I sent a Clerk for a portrait, which is the only one I have seen, and which is in my pocket.

From that and reading the evidence you were quite sure he was the man?—Quite sure.

Before you saw him?—I felt convinced. Of course I would not have sworn on the photograph.

But you were convinced?—I felt quite certain that he was the man. I would not have sworn upon a photograph that he was the man at all.

I am not saying you would; all I want to get is, before you saw him at all, from the photograph and other circumstances, you were convinced he was the man?—I was convinced he was the man.

Whom did you first see when you came to town about him?—I really cannot tell you. Some one of the Solicitors from the Treasury's Office.

Did you see any of the gentlemen at this table?—I am not sure. I saw Mr. BOWKER and Mr. BOWKER'S son.

Was it Mr. BOWKER who took your evidence?—It was Mr. BOWKER'S son, I think, if I am right in the gentleman.

And Mr. BOWKER was present?—He was going about the room, moving from table to table.

But were you in personal communication with old Mr. BOWKER about it?—I cannot say I was.

Surely! What day was it?—It was Monday morning.

Do you mean the day before yesterday?—Yes.

Surely you can tell whether you had any personal communication on that day with Mr. BOWKER about this matter?—I do not think Mr. BOWKER made any remark about it to me at all, except taking my deposition.

Are you prepared to say that?—I think I am. I think the only remark, if I recollect right, which he addressed to me was, whether I had seen—let me see, is there a photograph called "the Prison photograph"?

Yes.—I think Mr. BOWKER asked me whether I had seen the Prison photograph.

Did he show it to you?—No. I said I would rather see the man. He said "You had better see it," and he went for it. LUIE had been in the room when I went in, but I did not know it. I met several gentlemen I knew, and I was shaking hands with them, and before I had time to see LUIE properly he came out of the room.

How long had you been in the room, then, before you recognised LUIE?—LUIE was taken out of the room before I recognised him, almost before I knew he was in the room.

The LORD CHIEF JUSTICE: Had you seen him in the room before he withdrew from it?—Well, I had, and I had not. I got a side view of his face and said, "That was LUIE," but he went out of the room.

Dr. KENEALY: As I understand you, you did not first recognise him when you first saw him in the room?—No, I did not know it was LUIE. He was taken out, and I was taken into another to see him.

About how long were you in the room with him before he was taken out of the room?—Not a minute, I should think.

Did you meet them taking him out or what?—No, I had just gone in.

And had seen him?—Well, you may say I had seen him.

You know best whether you had or not?—Well I came into a room with perhaps some twenty people in it, as I should think; there were several people standing about by the fireplace who recognised me, and I was shaking hands with them, and there was a man taken out of the room, and they said, "There, that is LUIE," and I did not see him, it was such a casual glance, I could not see him.

Who said, "That is LUIE"?—I do not know; several of the gentlemen.

As he was being taken out of the room, "That is LUIE"?—That is LUIE.

And then you said you got a side look at him?—Yes.

And then afterwards when you saw the same person you recognised him?—Immediately.

Re-examined by Mr. HAWKINS.

Your own unaided judgment?—Yes.

The LORD CHIEF JUSTICE: You said something about his language upon his giving his evidence led you to the notion?—I say, my lord, he put on altogether such a bold front when I gave him into custody at the Police Station that it, if I may use the term, staggered the Policeman himself, and he cautioned me several times.

Do you remember any of the phrases he used on that occasion?—I cannot, only he was confident I was mistaken; he was another man, PETER PETERSEN, and had come from some other place altogether. I forget now. He had shaved his whiskers off then on the 12th and the 14th of October.

Between the day he came to you and you arrested him he had shaved off his whiskers, yet you identified the man in spite of that?—Yes.

Mr. HAWKINS: Now, one other question, which is, whether any document was found upon him?—Yes, a copy of the charter party was found on him which he got at our office before he left on the afternoon of the 12th. That was put in evidence at the Trial.

Mr. JOHN TODD, sworn.

Examined by Mr. HAWKINS.

Are you the gentleman referred to by the last Witness?—Yes, I am.

Are you a Chartering Clerk to Messrs. HEALD and Co.?—I am.

Do you remember Captain GRUNDLUND?—Yes, I do.

Coming to Messrs. HEALD and Co.'s?—Yes, I do.

On what day do you remember?—On the 12th October, 1865.

Will you just tell us shortly the conversation you had with him?—He wanted a charter for a vessel called the 'Margherita,' which he said was lying in Lowestoft, or Lowestoft Roads—I do not remember exactly. He said Lowestoft, and I asked what part of the world he wanted the vessel to go to, and he said to a Mediterranean port; he preferred Barcelona, and I said I thought I could find him a freight for Barcelona; and after looking round the merchants in the usual way, I brought him a charter, and on that day, eventually, I fixed him on that charter.

Was it to you that any application for money was made?—It was not to me.

Do you remember hearing the application made?—I did not hear the application made for money.

Now, on the 14th October, I think you were on the quay?—I was; that was on the Saturday.

Did you there see GRUNDLUND?—I saw him going down the quay side.

Was he alone?—Well, I cannot say. I think he was alone, but I cannot remember that exactly. I saw the man. I paid most particular attention to him, and watched him.

Did you recognise him as the person who had been chartering the 'Margherita'?—I did.

And you gave information, I think, to Mr. MATHWIN?—Well, I watched him where he went to first, and as soon as I found into which passage he had gone, I went and sought another Clerk belonging to our office, to go with me; we went, and I found him where I had seen him going, and I accused him of having deceived me by chartering a ship which was no ship at all—a myth; he said he did not know me or JOSEPH HEALD & Co.

Mr. Justice LUSH: What did you say to that?—I said if he would be kind enough to go with me to JOSEPH HEALD & Co., I thought he would remember him again. He protested again, and after some trouble, we took him along to the office.

There he was given into custody?—There he was given into custody of the Police Officer.

Where was it you watched him go to?—The office of HEIDSIECK & Co.

Where they another ship-broking firm?—They were merchants.

You were present at the Trial?—I was.

As a Witness against him?—Yes.

The LORD CHIEF JUSTICE: When he got to the office, what did he say? Did he acknowledge he was the man who signed the charter-party?—Oh no, he did not.

What did he say?—He said he was not the man at all, that we were mistaken.

Mr. HAWKINS: Did he give you a name at the office?—Yes; he gave another name. He called himself PETER PETERSEN, I think.

Have you within the last day or two seen that person?—I have.

Where did you see him first?—I saw him in a room in this building.

Have you seen him to-day?—Yes.

Where?—I have seen him sitting there.

That is the man sitting there (pointing to JEAN LUIE)?—That is the man.

Cross-examined by Dr. KENEALY.

Was he quite bald then?—Well, he was rather bald, but I do not think he was quite so bald as he is now—not quite, you know.

When he first came to you had he whiskers?—Yes.

I suppose between the month of October and the time when he was prosecuted at the Sessions, you did not see him at all?—I saw him on the Saturday.

That is what I say?—Between then and the Sessions I never saw him at all.

And after the Sessions you never saw him again?—I never saw him until Monday.

So the whole of your seeing him was on three occasions?—Three occasions.

In 1865 and 1866?—1865.

When was your attention first called to this matter recently?—When I saw the evidence of Messrs. HOFFMAN and SCHENCK, I thought it might be the same, and I bought his photograph.

I suppose you and your master had some talk over it?—Well, I bought a photograph and brought it to my master, and asked him if he recollected that man.

Did you converse about the matter?—We did not converse very much about it.

I am sure I did not ask you whether you conversed very much about it, but whether you talked about the matter. I suppose you had something else to do. You talked about it?—Yes.

And did you both agree that was like the man?—We did.

Were you in the private room the other day when Mr. MATHWIN was there? In this building?—Yes.

Did you go in with Mr. MATHWIN?—I went in with Mr. MATHWIN.

Did you see LUIE in the private room?—Yes.

How long did he remain there before he was taken out?—We went into a room to see him.

Did you go first of all into a private room with Mr. MATHWIN where Mr. BOWKER and his son were?—Yes.

That is the room I am talking of first?—Yes.

In that room did you see LUIE?—Well, I saw him behind a Policeman going out as I went in, behind a Policeman's shoulder.

At that time did you recognise him, or not?—I recognised him at once.

And had you seen more than one photograph before then?—No, I only saw one in Newcastle.

He took you into the private room here?—I do not know who it was showed me in. I followed some gentleman in.

Did he tell you LUIE was there?—No, they did not tell me LUIE was there. We asked for Mr. BOWKER and they showed us to him.

And how long were you talking to Mr. BOWKER about it?—I do not know that I was ever talking to Mr. BOWKER about it.

Did not he ask you any questions?—I do not know that he asked me any questions.

It is only yesterday or the day before?—It was Monday morning.

Surely you cannot have forgotten between Monday and now whether Mr. BOWKER asked you questions?—There was some one asked me a question whether I could identify the man, and I said "Yes."

I am talking to you about Mr. BOWKER. Did Mr. BOWKER put questions to you?—I do not think Mr. BOWKER did. I do not know Mr. BOWKER.

Have you forgotten?—No, I have not.

A gentleman with white hair?—A gentleman with white hair did not put any questions to me.

Re-examined by Mr. HAWKINS.

It is suggested that you saw him three times the whole of this business. The charter-party was transacted with you?—Yes.

And then you saw him on the quay?—Yes.

Dr. KENEALY: I object to this style of questioning him, telling him the various times.

A JURYMAN: He said so.

Mr. HAWKINS: Did you go before the Magistrate when he was committed?—I was not there.

Then you were before the Sessions?—Yes, I was with him the whole day almost the first day I saw him, backwards and forwards, from one office to another, respecting this charter, because he was a troublesome man to what I call fix. He was very particular about the clauses of the charter-party, and I had a great deal to do with him that day.

Mr. GEORGE THOMAS, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Clerk in the Long Room at the Custom House at Liverpool?—Yes.

How long have you been such?—I am in my twenty-third year.

In reference to all foreign vessels that arrive at the Port of Liverpool have you any official duty to perform?—Yes.

State what it is?—I take the reports from the masters of all vessels arriving from foreign ports with cargo or ballast.

Is there a book called the report book kept?—Yes.

Have you a report book for the month of May last with you?—Yes.

Let it be produced. (It was produced.) Will you tell us what the report book contains?—It contains all the cargo of the vessels, with the Master's declaration to it.

Vessels that arrive from foreign ports?—Yes.

Would you refer to the date of the 29th of May last?—I have it.

And tell me whether there was a vessel called the 'Circassian' which arrived at Liverpool at that date?—Yes, the steamer 'Circassian.'

Where did it arrive from?—From Quebec.

I believe you have an entry there, you may as well read it, which will give us exactly the particulars of the vessel?—"The ship's name: 'Circassian.' Tonnage: 1848. If British or foreign—(If British, port of register—if foreign, country to which she belongs): Glasgow. Number of Crew, British seamen, 123. Foreign seamen: none. Name of Master, whether British or foreign subject: British; JAMES WYLIE. Port or place from whence arrived: Quebec."

And the place of discharge?—That is in the other book.

And the names of brokers?—Yes, that is in the other book.

Have you searched the report book for the month of May and June this year?—Yes.

Did any other vessel of the name of the 'Circassian' arrive at Liverpool during those months except the one you have pointed to?—No.

A JURYMAN: Did she call at New York?—No, Quebec and Montreal; she reports there, a portion of the cargo is from Montreal.

Mr. Serjeant PARRY: Did she belong to the Montreal Ocean Steamship Company?—Yes, I believe that is the name.

Will you produce the other book, and tell us where she was discharged, and the names of her brokers. (The book was produced.)

By the JURY: Did she not belong to the Allan line?

Mr. Serjeant PARRY: We shall get that.

What is the entry there?—This is the entry of the vessels that arrived. It contains the consecutive number, from number one to the end of the year. "Name of ship: 'Circassian.' State to which she belongs: United Kingdom. Master: WYLIE. Port from whence arrived: Quebec. Place of discharge: Wellington Dock. Name of broker or agent: ALLAN, Brothers and Co."

Are these Montreal ships popularly known as the Allan line?—Yes, this is the Allan line.

Dr. KENEALY: I have no question to ask you.

Mr. HAWKINS: I have one of my learned friends here who came over in that very ship, the 'Circassian,' if you will allow me to ask him a question.

Mr. ALFRED CHICHELE PLOWDEN, sworn.

Examined by Mr. HAWKINS.

Did you come over from Quebec in the 'Circassian'?—Yes.

Upon the trip the last Witness has spoken of?—Yes.

Did you touch at New York at all?—No; it was out of course.

The LORD CHIEF JUSTICE: That was in May?—It was in May, my lord; we arrived on the 29th of May. I know it was just after the Derby day.

Mr. HAWKINS: He came on purpose for it, my lord. (Laughter.)

Mr. ALEXANDER McDONALD, sworn.

Examined by Mr. HAWKINS.

Are you the Purser of the 'Circassian'?—I am.

And were you so on her trip from Quebec to Liverpool?—I have been on the 'Circassian' ever since she commenced to run. This is a passenger list.

We have heard from the gentleman just called that she did not touch at New York at all?—No, she only goes to Quebec and Montreal.

Have you in your hand now a passenger list?—This is the passenger list for the voyage leaving Liverpool on the 24th of

April; Quebec the 17th May, arriving back at Liverpool on the 29th of May.

Was there any passenger of the name of LUIE on the trip from Quebec to Liverpool?—I have not the faintest recollection. If there was his name would be on the list.

The LORD CHIEF JUSTICE: Is there such a name there?—(After examining the list): I do not see it on the list.

Cross-examined by Dr. KENEALY.

Will you let me see that list? (It was handed.) I see all these entries are in the same handwriting, and apparently made at the same time?—There are two handwritings there.

Were they all made at the same time?—No, part made at the office in Montreal, and the other part by me.

Are you able to distinguish between what was made at Montreal and what was made after you left Montreal?—I am.

Will you just point out what was made there?—This was written in Montreal (indicating it).

That all represents first-class passengers?—Exactly.

Then was all the first-class passenger list made out at Montreal before you left?—All the cabin passengers' names, whether from Montreal or from a distance, they are communicated; those at a distance communicate with the office at Montreal in order to obtain their berths.

And all those were made at Montreal before you left?—With the exception I am able to point out in my own handwriting.

And that was entered while you were on board?—I can only see one on the cabin list.

One cabin passenger when you were at sea. Now can you give me any information as to whether any second-class passengers were done at Montreal?—Those down to that (indicating) were done at Montreal.

And about how many on board ship?—These and these (indicating).

That is a large number, twenty or thirty, or perhaps more?—More.

Do second and third-class passengers come on board without communication at all with the office, and pay for their passage on board to the steward?—No.

Then how is it you enter their names when at sea?—I shall explain to you: the steerage passengers who buy their tickets at Montreal go direct to the office, pay their passage money and receive tickets. They are put down on this list, the same as the cabin passengers. Steerage passengers from a distance who have not communicated with Montreal come on board the ship, and the Purser receives their tickets. He has to communicate back to Montreal by sending corrected lists of those passengers, one list to Quebec, and the other to Montreal. He completes this list first, so as to write his corrected list from it.

But what I want to get from you shortly is whether any passengers pay their passage money on board, and whether their names are then entered on that list?—Any passenger who comes on board the ship without having a ticket, pays his passage money to the Purser, and the Purser enters his name on this list, and enters it in the returns to which I have alluded.

That is what I want to ascertain, whether some passengers pay on board, and then have their names entered?—There are.

There are numbers of names there which appear to represent passengers who paid on board?—All passengers on board, whether paid passengers at the Company's office or the Agent's office, or to the Purser, their names are entered in a list similar to this.

But you do not seem to appreciate my question. There are a number of passengers who pay on board, and whose names are put on the list while at sea?—Very few; occasionally there are.

Are there any on that list?—If there are any they are on this list.

Can you tell me whether that list represents passengers who must have paid on board?—Passengers who must have paid on board and passengers who paid on shore.

But I do not want those who paid on shore, but on board. How many passengers does it represent who must have paid on board?—There is not one on this list who paid on board.

How do you know that?—Because what is paid on board I enter in sterling, and where you see "Agent" I write "Purser."

Now, let me see that list again. As I understand you all the passengers on that particular voyage paid before she left Quebec or Montreal?—Yes, according to that list and as far as my recollection goes.

I see some ticked and some not ticked; what do the ticks represent?—The checking off the tickets.

That ought to apply to all if it represents checking off tickets; look, does that represent persons who paid on board, or what?—This refers to checking passengers who were on the list who bought tickets in Montreal or paid their money at Montreal, because the corrected list says, "Passengers on list and not on board," and "Passengers on board and not on list." These checks refer to that corrected list.

Does it sometimes happen that sailors ship themselves on board ships on that line, and make some arrangement without paying actual passage money?—I believe it does, not often.

But it does happen?—I believe it does.

Then, of course, in cases of that description there would be no entry on that book?—Oh, that is a different entry altogether; sailors are quite different from passengers.

But if you do not find it out—I mean persons who come on board ships and make their own arrangements?—No man can come on board ships without making arrangements with the Captain; he is a sailor, or passenger, or is taken in as a stowaway.

I suppose if things of that kind happen, their names are not enrolled among the passengers?—Not enrolled among the passengers; but if the Captain wishes to prosecute them, he enters their names upon the official log-book, and puts them at once under the Emigration Act.

But does the Captain always find out that he has a stowaway on board?—He generally does—always does.

Does he, indeed?—Yes; that is my duty to look after that.

And you do the best you can, of course?—I make a thorough search.

Does it not sometimes happen, even with your vigilance, that it is not found out?—It has never happened in my case.

Re-examined by Mr. HAWKINS.

Now had you any stowaway on this voyage?—Not on this present voyage.

Mr. CHARLES JAMES CHAPMAN, sworn.

Examined by Mr. Serjeant PARRY.

Are you a Shipping Agent for the South-Eastern Railway Company at Folkestone?—Yes.

And you act as their broker also?—Yes.

For how many years?—For twenty.

In the months of May, June, and July of this year, was there any boat that went from Folkestone to Ostend?—No; not that carried passengers.

And I believe you have never known a boat to have carried passengers from there?—Never; there has not been any ply between Folkestone and Ostend.

Cross-examined by Dr. KENEALY.

You put some emphasis on "carry passengers;" is there a boat between these places?—I put it because there has been a special trip occasionally made for conveyance of bullion alone.

Then there is sometimes a boat?—I think I remember two in ten years.

The LORD CHIEF JUSTICE: Is there any steamer from Folkestone to Ostend for goods alone?—No, none at all; there is no traffic between the two ports.

A JUROR: There is no mail boat?—No.

Dr. KENEALY: Can any persons book from Liverpool to Folkestone, through?—They could at one time. I cannot say whether they can now.

Could not they last July?—I cannot say.

Have you looked at the time tables?—I have not.

The LORD CHIEF JUSTICE: How would they come supposing they could?—I think they would come by the way of Reading.

Dr. KENEALY: Reading and Basingstoke from the Birkenhead side of Liverpool?—I think they would come that way; but I cannot speak to their being able to book now or at the time you name, that is nothing to do with me. Being connected with ships I can state nothing connected with the railway.

Of course, if you have no knowledge I will not press you.

Mr. Justice MELLOR: Must not they come through London?—No, I fancy they branch off at Reading.

How do they get to Reading?—By the Great Western and then South-Western line to Red Hill, and then through.

The LORD CHIEF JUSTICE: But how do they get from Liverpool to Reading?—By Chester and Shrewsbury, I think.

Dr. KENEALY: Do not they start from Liverpool, the Birkenhead side?—I cannot speak as to the rail at all with certainty.

If that were so, I suppose it would be on the Great Western time tables?—I should imagine so.

Re-examined by Mr. Serjeant PARRY.

When were these two boats despatched in the ten years you mention?—It was during the time of the French War.

And are those the only two that you remember, bullion boats?—Certainly, within the last ten years.

The LORD CHIEF JUSTICE: But no passengers have been allowed to go?—No, my lord.

Mr. Serjeant PARRY: Are they Messrs. ROTHSCHILD'S?—Yes.

Mr. GEORGE WHATELEY, sworn.

Examined by Mr. Serjeant PARRY.

I believe you are the head of the Audit Department of the South-Eastern Railway Company at London Bridge?—I am.

Are boats run between Folkestone and Ostend?—None.

Do you despatch some special steamers?—Very occasionally.

For what purpose?—Generally for the carriage of bullion.

For Messrs. ROTHSCHILD?—Yes.

Have you despatched any special boat this year?—None whatever.

In those boats are passengers allowed to go?—No, except they accompany those in charge.

Cross-examined by Dr. KENEALY.

Do you know whether there is a direct line by the Great Western Railway from Liverpool to Folkestone by Birkenhead?—No, none.

You do not know it?—No.

The Lord Chief Justice: Do you say you do not know it?—I do not believe there is one.

Mr. Hawkins: That is the whole of the evidence I have to offer on this matter.

Dr. Kenealy: My lord, this evidence with reference to Luie has taken both myself and my friends by complete surprise. We called him, after communications on which we were bound to rely, and after, as we have it in evidence, a report made to us from New York by Mr. Whalley, and I would ask your lordship to allow me some time to consider what application we ought to make to your lordship with reference to calling the evidence in reply to this, if we are to be permitted to do so. At present we really have not made up our minds what to do, and do not know what to do, but we should like to be in communication with those gentlemen on whom we mainly relied in calling him; and if your lordship will allow us some time to consider what to do we shall regard it as a favour.

The Lord Chief Justice (after a brief consultation with his learned brothers): I think, Dr. Kenealy, your application is not an unreasonable one, therefore you ought to have an opportunity of consultation, in order to determine what course you will pursue under the circumstances. Between this and to-morrow morning you will have time to do that, and therefore if you wish us to adjourn——

Dr. Kenealy: I do not want any adjournment, my lord, but only time to consider what we will do in this matter. I am quite ready to go on with my Speech, but should like to have until Monday to consider this matter.

The Lord Chief Justice: We cannot give you until Monday.

Dr. Kenealy: Several of these gentlemen under whom I am acting, who are trustees for this man——

The Lord Chief Justice: We have nothing whatever to do with those gentlemen. You as Counsel must exercise your own discretion.

Dr. Kenealy: We can exercise none until we see those gentlemen.

The Lord Chief Justice: I do not know anything about them.

Dr. Kenealy: I want your lordship to know——

The Lord Chief Justice: What?

Dr. Kenealy: What we require, to see those gentlemen under whose instructions we really act.

The Lord Chief Justice: I know of nobody but the parties in the Cause, the Counsel in the Cause, and the Attorneys in the Cause. I know no one else.

Dr. Kenealy: We have had plenty of questions asked as to certain gentlemen who are supposed to be supporting this Defendant, and those are the gentlemen. They are on your lordship's notes. I am sure you remember numerous questions were asked them.

The Lord Chief Justice: There is no doubt about it.

Dr. Kenealy: What I say is this—that I may not be called upon before Monday next to say what course we think on consideration we ought to adopt.

The Lord Chief Justice: We cannot grant you anything of the kind; it is quite out of the question. You have your Client; you have an opportunity of communicating with Luie. If there is any evidence by which the evidence which has been adduced to show his identity with the person named Lundgren can be shown to be mistaken, then of course it ought to be open to you, and you ought to have reasonable time to bring that before us; but you must know by this time—it has been going on several days, and there has been abundant opportunity to communicate with anybody on the subject—and we cannot let that matter stand over.

Dr. Kenealy: May I ask in what way can anybody be possibly damnified by giving us until Monday to agree upon the course we ought to pursue?

The Lord Chief Justice: Upon the very ground you place it, that it is not an information conveyed to you by your Attorney or your Client or the person whose identity is in question, but that the proceedings of this Court shall be governed as it were by some committee of gentlemen sitting——

Dr. Kenealy: We do not insinuate anything of the sort, my lord, or suggest any such idea. All we ask is time for information and instruction and that your lordship will not call upon us immediately——

The Lord Chief Justice: You have had full and abundant opportunity of obtaining that information and instruction if it was required.

Dr. Kenealy: Well, we tell your lordship that we have not.

The Lord Chief Justice: Very well, then you ought to have had, that is all.

Mr. Justice Mellor: When Luie was brought up into our room, at least when the question of his bail was opened, and Mr. Whalley was present, we accepted his bail so far as he was content to be one of the bail, and it was then an understood thing that Witnesses were coming to prove these very facts, or at least a great many of them. No doubt some have arisen since, but it would be a most extraordinary view if we were now to give you until Monday to consult these gentlemen, who are responsible, to some extent at all events, as you say, for your calling Luie. I do not think that we can consider any but the Counsel or the Attorney. Anything that we can see would have really a fruitful end I should be the last to object to, but it is a pure speculation.

Dr. Kenealy: If it could be suggested in the slightest way possible that the Course of Justice, or the administration of the law in this Court, would be impeded or damnified in the least by according to us time—three or four days—to consider our course, I would not ask it.

Mr. Justice Lush: If we could see that information must come from other persons it would be different, but surely the only person who can give you information as to whether Luie was the man who saved him, is the Defendant. You can get all the information from him. You cannot get all the information from those you refer to; they were not there.

The Lord Chief Justice: What do they know more about the matter than yourself?

Dr. Kenealy: Mr. Whalley, as your lordship knows, was through various parts of the United States of America.

The Lord Chief Justice: We know that perfectly well.

Dr. Kenealy: And he made a report to us as the result of his mission. Mr. Whalley is one of those gentlemen we would ask time to consult personally, and he is down in Wales.

The Lord Chief Justice: What have we to do with any consultation with Mr. Whalley? He has been to America for the purpose of getting information and evidence if possible to support Luie, but otherwise he knows no more than anybody else; because we understand that Luie arrived on the 5th of July, and consequently before that time could not have been known to Mr. Whalley. Very true, Mr. Whalley seems to have been the person who took Luie to the Defendant. That is all we know of his connection with Luie in any sort or way. He took him to the Defendant after having seen him at the office; that is all. Why Mr. Whalley or his advice should be necessary to guide competent Counsel as to the course they ought to pursue, under given circumstances that arise at this stage, I cannot understand.

Mr. Justice Lush: Mr. Whalley can know nothing of the fact.

Dr. Kenealy: If your lordship asks me to give any reason, one of the reasons is this: if we are advised that Witnesses can be brought from America to support this man's statement, it will require a large sum to bring them, and as your lordship says in this Case the interests of truth and justice are paramount to all other considerations, and have induced your lordship to a certain extent, I will not say to revolutionise the criminal law of the country, but at all events to depart from a very well-known rule of procedure, which has existed for centuries, in what possible way can the Prosecution be damnified by your lordship granting our request?

The Lord Chief Justice: You have asserted that in which I do not agree.

Dr. Kenealy: In what way can anybody be damnified?

The Lord Chief Justice: That is one thing, but when you say "we have very little short of revolutionised the criminal procedure," I say we have done nothing of the kind. Such a Case as this has never presented itself.

Dr. Kenealy: With all submission such an inquiry as the present one with Luie is not to be found in the whole history of England.

The Lord Chief Justice: Because it has never arisen.

Mr. Justice Lush: I undertake to say that no Witness was ever kept back as Luie was in this Case, and no statement made about him in your Opening Speech.

Dr. Kenealy: I explained fully why that was done, and I do not mean to modify that at all.

Mr. Justice Lush: But that makes it peculiar.

Dr. Kenealy: I am asking your lordship to grant me a thing that cannot do anybody any injury; it is impossible that it can.

The Lord Chief Justice: That does not signify. I do not see that that is sufficient reason. I cannot conceive that we ought to give any time whatever while you are consulting with a gentleman who is not your professional adviser, who is not a party in the Cause, and who I cannot help recollecting has mixed himself up in this Case in a most unprecedented way.

Dr. Kenealy: He certainly has taken a strong interest in it.

The Lord Chief Justice: Not only that, but he is a gentleman who has gone a great deal further than taking a strong interest in the Case. What we have said we must abide by; we will give you until to-morrow morning, and then if an affidavit from the Attorney of the Defendant is presented that he has Witnesses to produce and can produce, we will consider how far we ought to accede to any postponement of this part of the Case, but beyond to-morrow morning we cannot go.

Dr. Kenealy: I do not mean to ask for a postponement, my lord, but only that you give us until Monday.

The Lord Chief Justice: No reason whatever is assigned for that, and you ought to have made up your mind already; the Case has been going on with regard to Luie for the last two or three days.

Mr. Serjeant Parry: Last week.

Mr. Justice Mellor: Friday week.

Dr. Kenealy: Your lordship orders us to be ready to-morrow.

The Lord Chief Justice: Strictly speaking, we ought to call on you now to say what course you intend to pursue; but you say you have not made up your mind. I quite agree that you and your learned coadjutors should have full time, and I think between this and to-morrow morning is abundant time to make

up your mind as to the course you intend to pursue. Then if there are Witnesses whom you happen not to have in London, if we have an affidavit from your Attorney that he believes those Witnesses material and forthcoming, we will consider what shall be done. Certainly I shall expect an affidavit from the Attorney and shall not be satisfied with an affidavit from anybody else, and a very explicit affidavit too. (After a brief consultation with the other Judges) Then LUIE is not wanted farther.

Dr. KENEALY: I understand he is to be examined by medical men on both sides.

The LORD CHIEF JUSTICE: If you made an application to us for that purpose, if you have an examination by medical men let him be examined by the medical gentleman who examined him before.

Mr. HAWKINS: Unfortunately he is dead.

Mr. Justice LUSH: Mr. MAYHEW?

Mr. HAWKINS: The gentleman, at all events, who examined him.

The LORD CHIEF JUSTICE: Mr. MAYHEW is the gentleman who signed the certificate.

Mr. A. K. STEPHENSON: He signed it for his junior, my lord.

Mr. Justice LUSH: At the same time when that is done it is very desirable that the Jury, if there be no objection, should see the other marks which are indicated.

A JURYMAN: The moles.

The LORD CHIEF JUSTICE: Whoever examines him for the one thing should examine him for the other, the moles as well as the hernia.

Dr. KENEALY: I understand that an arrangement was made between the Attorneys yesterday afternoon that this examination should take place to-day at 11 o'clock, and we had a medical gentleman at the time ready to go on with him; and they said they were not ready because LUIE was wanted in Court. I do not complain of that.

The LORD CHIEF JUSTICE: No, they could not have done without him.

Dr. KENEALY: I do not complain of that, but it is a pity they did not think of that last night before we arranged that our medical man should be here at great inconvenience to himself. It was subsequently arranged to take place at the adjournment of the Court at half-past one, and he will be here to do it. Now it seems that Mr. HAWKINS wants to change that to get some one else, so that we do not know what to do.

Mr. Justice LUSH: Is that Witness here?

Mr. HAWKINS: No; it is difficult to keep Warders of Prisons here who have duties to perform.

The LORD CHIEF JUSTICE: You might make an arrangement to meet to-morrow at the Prison.

Dr. KENEALY: All this throws additional expense on us. Our medical man will be here at the usual time for the adjournment, and will have to be sent away again if that is to be altered. I hope your lordship will say that the presence of that man is not essential, and that two medical men, one on behalf of the Prosecution——

The LORD CHIEF JUSTICE: But he is not here.

Dr. KENEALY: Surely, my lord, the gentleman who made the entry. Any medical gentleman, I apprehend, would do.

The LORD CHIEF JUSTICE: I think it is desirable to have one whose instructions and with whose authority he inserted the word "hernia."

Dr. KENEALY: We had notice to the following effect: "The examination by the Doctor may take place during the adjournment for luncheon as LUIE is wanted in Court for identification. I regret we cannot spare our private room;" and then it is stated "A Doctor has arrived from Chatham, and the examination may take place when and where you choose." Now, if a Doctor has arrived, I do not see why it should be put off till to-morrow.

Mr. HAWKINS: It is not the gentleman who signed the report.

The LORD CHIEF JUSTICE: I think we ought to have him.

Mr. HAWKINS: And I take on myself to say with reference to other Witnesses, in my judgment, if there is any examination—your lordship knows it was not on my application at all that the examination takes place—but if so, I think it would be desirable that the Warder who noticed the marks of moles should be present, because what one gentleman calls a mole another may not.

Dr. KENEALY: Now, does your lordship think that we ought not to be called on to decide what course I shall take until the result of that examination is known?

The LORD CHIEF JUSTICE: No.

Dr. KENEALY: My lord, it may very much guide and shape our course. If that examination leaves no moral doubt in our mind, then it would be useless to call Witnesses. Surely that ought to be allowed.

Mr. Justice LUSH: Dr. KENEALY, those who instruct you must know what the facts are.

Dr. KENEALY: What I know is this: I am challenging the examination, and I am doing that on instructions, but those instructions may turn out to be erroneous, and if they do, why we may not call Witnesses at all; therefore ought we to be called upon to announce our course until we know what the result of that examination is? It would be a different thing if it were an examination thrust upon me, but remember that I am asking it——

Mr. HAWKINS: We cannot bring away both medical men at the same time.

Mr. A. K. STEPHENSON: We wrote for both yesterday, and one has come up and says he must leave the other down there.

The LORD CHIEF JUSTICE: Do you want them both? Would not Mr. MAYHEW, who signed that, be sufficient?

Mr. HAWKINS: It has been suggested to me whether, if they desire to have it now, we could have another to-morrow if it is desired. I cannot bring the two medical men at once.

The LORD CHIEF JUSTICE: There is nothing to prevent your medical man—we would not interfere in any way with his going with LUIE to some private place and examining him at once.

Dr. KENEALY: Is not it better that those two should do it together?

The LORD CHIEF JUSTICE: I am merely meeting the case of convenience or inconvenience which you are suggesting, and you say it is hard upon you to determine upon this to-morrow morning, whether you propose to keep up the Case or to give it up, and hard upon you to have to make up your mind as to that until you know the result of the examination by the medical men. You will be principally, I suppose, guided by the opinion of your own man. If your own man examines him, and if upon that examination it turns out that the hernia is not sufficiently strong for you to avail yourself of it, or it turns out this man has the moles that are inserted in that particular document, then you may exercise your discretion, but you would know that from your own man just as jointly from the two—I mean sufficiently to make up your own mind. As soon as your medical man comes let LUIE be taken into the adjoining place.

Mr. Justice LUSH: One medical man is here.

Mr. A. K. STEPHENSON: We have one here, my lord.

The LORD CHIEF JUSTICE: Well, what I say is, that we should have Mr. MAYHEW forthcoming, and if Dr. KENEALY requires it, let him be examined here to-morrow in Court. I should like to hear from Mr. MAYHEW, who entered the word "hernia," and coupling it with the statement that he was a man fit for any labour, what he meant by it, and if he put that down what he knew about it. Therefore we cannot decide anything on the subject with regard to this hernia matter until we have Mr. MAYHEW here, but I cannot see any objection to having two medical men there to examine him at once.

Dr. KENEALY: Then it will be two of their Doctors against one of ours.

The LORD CHIEF JUSTICE: No.

Dr. KENEALY: Because your lordship says that Mr. MAYHEW is also to examine him to-morrow.

The LORD CHIEF JUSTICE: If you like to wait until Mr. MAYHEW comes, then the examination shall be by those two. If you would like it at once it shall take place at once, but with this proviso, that I shall insist upon knowing from Mr. MAYHEW the why and the wherefore he made that entry of hernia, whether he had ocular demonstration of the fact, or whether he received that statement from someone else.

Dr. KENEALY: I should wish it to be made at once, as your lordships are compelling me to announce my decision to-morrow morning.

The LORD CHIEF JUSTICE: Then we had better meet at two o'clock.

Dr. KENEALY: Your lordship said that you would adjourn for us to consider until to-morrow. I might be arranging my papers all the evening, and perhaps your lordship will adjourn now.

The LORD CHIEF JUSTICE: I suggested that, but I thought you said you wished to go on.

Dr. KENEALY: I had no wish, but was anxious that you should not imagine that I asked for an adjournment for time to consider for any convenience of my own.

The LORD CHIEF JUSTICE: No, I did not suppose that.

Dr. KENEALY: Then I would like to accept your lordship's offer to give us time to consult until to-morrow, and adjourn the Court now.

The LORD CHIEF JUSTICE: Be it so.

Dr. KENEALY: My lord, the examination, if you please, will now be made, and then we shall meet to-morrow morning at 10 o'clock.

The LORD CHIEF JUSTICE: Very good.

[Adjourned at 10 minutes past 1 o'clock till to-morrow morning at 10 o'clock.]

ONE HUNDRED AND THIRTY-NINTH DAY.—THURSDAY, DECEMBER 11TH, 1873.

On the Judges taking their seats at a quarter-past ten,

The LORD CHIEF JUSTICE said he regretted to state that his learned brother Mr. Justice MELLOR, was absent, and would not be present to-day, on account of illness.

Mr. HAWKINS: My lord, the examination of LUIE yesterday afternoon having taken place at the request of the Defendant's Counsel, a medical gentleman was present from Chatham. My lord, I deem it my duty to call him for the purpose of telling your lordship the result of that.

DR. JOHN JAMES DOUGLAS BURNS, sworn.

Examined by Mr. HAWKINS.

Are you the principal Medical Officer of the Chatham Convict Prison?—I am.

And I believe you have been so for some time before and since the year 1868?—I have.

Will you be good enough to look at that medical history sheet? It is signed, I see, by Mr. CHARLES HENRY MAYHEW. What office does he hold in the Prison?—He is Assistant-Surgeon in the Prison. He has not been there very long. He has only been there from about the 15th of March last.

Was there a gentleman there of the name of McDIOMED in the Prison?—There was.

What was he?—He was the Assistant-Surgeon in the Prison at that time.

The LORD CHIEF JUSTICE: You mean before Mr. MAYHEW came?—Before that gentleman came.

Mr. HAWKINS: In 1868 was Mr. McDIOMED Assistant-Surgeon?—In 1868 he was there, but he left then. He was there at that time when this Prisoner was there.

When did he leave?—He left about that time.

About 1868?—Yes.

Do you know whether Mr. McDIOMED is alive?—He is dead; he died in India.

Now the medical history of the Convicts which is recorded upon that sheet, is not medical history recorded from any personal inspection of your own?—It is not.

Do you know from whose personal inspection that medical history is taken?—From Mr. McDIOMED's.

Were you present at the examination of LUIE yesterday?—I was.

Which took place in one of the rooms of this building?—It did.

Will you tell me first of all, did you examine his hands?—I did.

More particularly did you examine his little finger?—Both of the little fingers are crooked, one particularly.

Before you made the examination of the fingers, did anything pass between you and LUIE. I mean to say, was there any objection at all to your examination?—Well, he doubled two fingers up to show me, and afterwards he showed me the hand opening quite easily.

Mr. Justice LUSH: He doubled two fingers?—The ring and little finger of that hand he produced, and afterwards opened them properly.

What, both?—No, the little finger was crooked, but he straightened the other fingers out.

The LORD CHIEF JUSTICE: Could you form any judgment as to what the contraction arose from?—He told me it was congenital, but I do not believe him. I think it is an injury.

In both hands?—No, in one.

And as to the other?—It possibly might, but it is very doubtful.

Mr. HAWKINS: Does this medical history sheet record the medical history at the period of his reception into Chatham Prison?—Yes.

The LORD CHIEF JUSTICE: I take for granted that it does; it records there what labour they are fit for, which would be a matter of perfect indifference if he was going out, but of importance if he was coming in.

Mr. HAWKINS: It is not on the one I have in my hand.

The LORD CHIEF JUSTICE: Only on the one I think handed up to me. I do not think it was put in at all.

Mr. HAWKINS: Yes.

Now I see here particulars of each Convict: "Morbid conditions present—hernia; physical condition—muscular; for what labour most fit—any." Did you examine him with a view of seeing if you found any traces at all of hernia?—Dr. McDIOMED examined him.

The LORD CHIEF JUSTICE: Yesterday?—I examined yesterday.

Mr. HAWKINS: Tell me now the result of your examination yesterday?—I found there had been hernia on the right side easily reducible.

During the whole time that he was in Chatham, did he ever wear a truss?—No; he never applied for any truss. Had he done so we should have had one issued to him, and he was never at hard labour, and that was the reason probably.

Did you see his back?—I did.

Did you find any marks upon his back?—No marks, but some small moles.

Whereabouts did you observe those moles?—Between the shoulders and over the loins.

Mr. Justice LUSH: Have you got that paper in which the Discipline Officer made the entry? How is it described?

Mr. HAWKINS: "Moles right side of body, several moles on back."

Mr. Justice LUSH: Is that correct?—It is, my lord.

Mr. HAWKINS: I do not know, Dr. BURNS, whether personally you recognised the man?—I did.

The LORD CHIEF JUSTICE: You remember him, do you?—I remember him perfectly.

Mr. HAWKINS: As LUNDGREN?—As LUNDGREN.

Confined as a Convict under your charge?—He was.

Dr. KENEALY: I have no questions to ask, my lord.

Mr. HAWKINS: Mr. MAYHEW is in attendance in obedience to your lordships.

The LORD CHIEF JUSTICE: The matter is now explained, because I did not know at that time there had been a former gentleman who had gone away. I supposed that Mr. MAYHEW was Assistant-Surgeon at the time. Now it turns out that Mr. McDIOMED was.

Mr. HAWKINS: Perhaps they may now return, as their presence is required at Chatham.

The LORD CHIEF JUSTICE: Certainly.

Now with a view to the further course of proceeding I must ask Dr. KENEALY what he proposes to do?

Dr. KENEALY: My friend and I, and some other Counsel who have been engaged in this matter from the beginning, most carefully consulted for a long time yesterday evening, as to what should be the course we should pursue. We were under very considerable difficulties because this man—LUIE—representing himself as a foreigner, of course the only way in which we could corroborate him would be by getting persons from America, and the various places he represented himself as belonging to, in order, if he were the person he represented himself to be, to identify him as being in the places he mentioned he was; and also we did receive intimations of various other persons who might possibly have thrown a good deal of light on this transaction, but we thought it wiser to defer it until the result of this medical investigation.

THE LORD CHIEF JUSTICE: Quite sensible and right.

Dr. KENEALY: Your lordship will do me the justice to recollect that it was at my suggestion and challenge that the medical examination was made, and that was made on reports made to us by LUIE himself.

The LORD CHIEF JUSTICE: No doubt that it is so.

Dr. KENEALY: The result of that medical examination, as I have heard it, satisfied my mind that it would be useless to bring any Witnesses from America to identify this man or to substantiate his story. Therefore, my learned friends and I consulted this morning as to what would be the result if the examination by the medical gentlemen took a certain line; and, therefore, have come to this resolution, my lord, of leaving it as it stands.

The LORD CHIEF JUSTICE: Then, that being so, I think there cannot be the slightest doubt or hesitation as to the course the Court is to pursue, which is at once to commit LUIE to take his Trial; that is to say, to be subjected to prosecution for perjury, and we shall bind over, unless we receive at once his assent, the Solicitor of the Treasury to prosecute him; but we think that the course referred to the other day is the better course, because it gives the accused the better opportunity of defending himself by calling Witnesses, if he has any, before the Magistrate, and having those bound over, so that he may have them at the public expense on his Trial, if these Witnesses should be at all the Witnesses of truth. Therefore, what we wish to do is to commit LUIE and direct him to be publicly prosecuted for perjury, desiring the Witnesses to be taken and examined before a Magistrate. At the same time I beg to say it must not be considered that the Court desires to interfere with any action which the Secretary of State may be advised to take with a view to the revocation of the license which, as the evidence now stands, has been most scandalously abused.

Mr. Justice LUSH: I suppose it is understood that the Treasury will prosecute?

Mr. JOHN GRAY, Q.C. (Solicitor to the Treasury): I do not know whether your lordships expect me to say anything?

The LORD CHIEF JUSTICE: We relieve you from any responsibility by directing that you do prosecute.

Mr. JOHN GRAY, Q.C.: Of course I shall enter into recognisances.

The LORD CHIEF JUSTICE: We would not even require that from you, if you say you will do it. That is quite sufficient.

Mr. JOHN GRAY, Q.C.: I shall do so, my lord.

Mr. Justice LUSH: I suppose we commit him to Newgate, and then he will be taken out of that at the convenience of the parties before the Magistrate.

Mr. HAWKINS: I do not know whether I may interpose one single word here to call your lordship's attention—of course, I only do that in the discharge of my duty—to the places which the Witnesses have to come from. Your lordships know they

have all been examined within the presence of LUIE during the last few days, and a number have come up from Newcastle, Hull, and Bristol.

The LORD CHIEF JUSTICE: I do not think that would be necessary. If you call the Warders and evidence from Chatham that is a *prima facie* Case on which any Magistrate would commit.

Mr. HAWKINS: Quite so. I merely want it for Mr. GRAY'S information.

The LORD CHIEF JUSTICE: The Witnesses have given their evidence here, the Prisoner will have full knowledge of what the Witnesses will say, as he heard them himself, and the object of sending him before a Magistrate, instead of at once directing a prosecution, is to give him the advantage of being able to call Witnesses, and afterwards having them produced.

Mr. HAWKINS: I quite understand, my lord.

The LORD CHIEF JUSTICE: Dr. KENEALY, will you now go on with your Speech?

Dr. KENEALY: I would rather wait, my lord, a few minutes, until thislittle hubbub has subsided.

The LORD CHIEF JUSTICE: Certainly.

Mr. Justice LUSH: It will take some little time to make out the warrant.

The LORD CHIEF JUSTICE: Then we had better wait until that is completed.

(After a short interval)

Mr. Justice LUSH: You need not have any of the Witnesses from distant places.

Mr. HAWKINS: I quite understand, my lord.

The LORD CHIEF JUSTICE: What we do is, JEAN LUIE is a prisoner in the custody of the Gaoler of this Court, and we further direct that he be committed for Contempt of this Court, in having committed the offence of perjury, and that he be prosecuted for that offence, and taken before a Magistrate for the purpose of that prosecution.

Mr. Justice LUSH: For the present he goes back to the Prison of this Court until he is taken before the Magistrate, and committed by him.

The LORD CHIEF JUSTICE: That is the proper course.

(JEAN LUIE was then removed in the custody of the Governor and a Warder of the Holloway City Prison.)

NOTES ON JEAN LUIE.

As this is probably the last extended reference that will have to be made to LUIE or LUNDGREN, in the course of this Trial, we think it well to supplement it with a few additional, and we hope final, observations.

And first, we cull some extracts from notes written by Lord RIVERS during the interval between LUIE'S first appearance and his final discomfiture. They shew the various phases of feeling with reference to that individual, as they presented themselves to that nobleman's mind. They demonstrate in some measure, the perfect *bona fides* of those who put him into the Witness-box.

LETTERS FROM LORD RIVERS ON JEAN LUIE.

Wednesday, September 3rd, 1873.

MY DEAR DOCTOR,—I heard from BLOXAM this morning, who said, "WHALLEY had returned triumphant and had a most satisfactory interview with you." What does it mean? If his American trip enables you to corroborate LUIE'S statement of the 'Osprey,' TICHBORNE *must* win his Case in spite of all the unfairness of Judges and Jury.—Yours sincerely,

RIVERS.

Thursday, October 9th, 1873.

MY DEAR KENEALY,—I cannot tell you how pained I am at the tone and contents of your letter of this morning. No wonder you are downhearted; after all the time and labour you have devoted to this Case to see that through injustice and a total disregard for truth, your efforts are not allowed to win in a just cause, is enough to sicken anyone and disgust one with all the world. I feel sure that if an angel from heaven came down to swear to the identity, the verdict would still be against this man, but still I cannot believe JOHN BULL will witness such conduct without a murmur. It is clear from COCKBURN'S announcement that he means calling rebutting evidence, and ONSLOW writes me word the Prosecution have 200 Witnesses, and we 80 still to go into the box if money can be found to get them there. I, in my ignorance, believed that in a Trial the Prosecution did its best to prove their Case by the production of Witnesses, and that then the Defence did the same, the Judge advising the Jury on which side the greatest amount of evidence rested. But surely if the course proposed is illegal (at any rate in so far as custom goes) you will not fail to call the attention of all England to it. My letter-bag again went down the line, which caused the delay in your previous letter.—Yours ever sincerely,

RIVERS.

Wednesday, Oct. 22nd, 1873.

MY DEAR KENEALY,—When I last saw TICHBORNE he made the only speech which ever showed his fear of the result. He said "I wish you would impress upon KENEALY that he ought to remind the Jury in his Speech that if they have any doubt of my guilt I am entitled to the benefit of the doubt; and Counsel are very apt not to mention this, which is a material point for a Prisoner."—Yours sincerely,

RIVERS.

Wednesday, October 29th, 1873.

MY DEAR KENEALY,—I spoke to SPOFFORTH last night, who will communicate with you on the subject of our conversation. The place you mentioned (Shaftesbury Borough) is booked for another, and your wishes cannot be granted, but many other places are open to you, and he says you would succeed anywhere, especially in London, where a chance exists. We had a deal of Tichbornia, as SPOFFORTH tried to convert our host—HAMMERSLEY—but without avail. He is the most bitter against TICHBORNE of all my acquaintances, receiving his cue and information from a Mr. MORIARTY, who is a daily attendant in Court. The absence of CUSTANCE, SHERSTON, CONSTABLE, &c., is made the most of by the anti-Tichbornites and no doubt it is very damaging to the Case. In the opinion of HAMMERSLEY you had only one Witness (LUIE) who proved anything in your favour, *and they know for a fact* that his whole evidence will be disproved by the American rebutters, and that his whole story was a lie!!!—In haste, Yours sincerely,

RIVERS.

☞ The MORIARTY here mentioned was the fugleman barrister, who with a number of wigged companions led the laughter, hisses, and applause which graced the Trial. Lord COLERIDGE, after the verdict, appointed him to a place worth £500 a year.

Tuesday Night, November 18th, 1873.

MY DEAR KENEALY,—Of course you know more of what is going on than I can tell you, but a friend of mine (CHARLES HAMMERSLEY), of COX & Co., is staying here. He is, without any exception, the most vicious opponent both of yourself and TICHBORNE I have ever met, and his whole time out of banking hours is passed in crying down TICHBORNE, and upholding the conduct of the Prosecution. In a room full of men this evening, the subject cropped up. Several were in favour of TICHBORNE, and abusing the Powers for the partiality displayed by the Bench, whilst he fought their battle and stated as follows: "That the Prosecution had reason to believe all LUIE'S evidence was false when it was given, and that by their mission to America they have obtained evidence which will prove not only that his evidence was a concocted story, but that *his name is not* LUIE, and they will prove who he is; that the whole story of the 'Osprey,' as he told it, was false, and that his evidence will be as satisfactorily disproved as BROWN'S was." No doubt this information is of little or no use to you, but I can't keep my temper or resist an outlet when I hear this vicious ass talk. His informant on the Case is a certain MORIARTY, who has been a daily attendant since the Case opened.—Yours sincerely,

RIVERS.

Sunday, November 30th, 1873.

MY DEAR KENEALY,—Many thanks for your two letters. You have been most kind and considerate in your daily reports. Now that heavier labours devolve upon you, and that there will be nothing for you to report upon, I shall not expect a letter unless you know of anything important to communicate. I heard from TICHBORNE Friday night about the sensation got up *re* LUIE, but no doubt it was clap-trap and of no account. That LUIE was a true Witness I am as convinced as if I had been on the 'Osprey' myself. SPOFFORTH wrote to me this morning, and says, "Just one line to say that I think HAWKINS has completely failed in the attempt to break down LUIE, and having done so, someone to help him planned a *coup de theatre*, which also failed, for according to the 'Standard' LUIE has not been arrested. I am glad the Dr., whom I have not had time to go and see, mentioned the public, and perhaps the 'Court' may have reason to regret they treated the public with such contempt!" You have an onerous and most difficult task before you, and in my opinion the result of the Trial depends entirely on your Speech. If anyone can be equal to such an occasion, thou art the man, but no Counsel ever yet had so difficult and delicate a task. I hope your eloquence will never run away with you, and that unwittingly you may not say that which this hostile and talented Chief can pull you up for. If he can, he will; nor would he stick at committing you, if you give him a chance. Therefore be guarded; but within bounds, flay them alive, and show the Jury and the world how opposed their conduct has been to all fairness and the recognised practice of law. The Jury cannot convict, and *dare* not after such a plain and truthful resume of the evidence as you will put before them. The Prosecution called CHILDERS to speak as to Melbourne Harbour. This evidence was upset ten times over. So would the Staten Island evidence have been, had

ALBERT GRANT.*

LORD HENRY LENNOX.*

* These distinguished gentlemen favoured the Court with their presence on December 11th—therefore we insert their portraits.

you been allowed to call Witnesses, but I don't think either the Jury or the public can attach much value to the rebutting business. I feel sure you will make the grandest Speech ever yet hear I within the walls of the Court, and that you will carry the day. I only wish it were in my power to come up and hear it, but it is impossible. Do not omit to make good capital out of the Sandhurst division-sum, for I am sure that is one of TICHBORNE'S strong points. The Chief and the Juryman say the Spanish divide in the same way, but ORTON was at school with PAGE and the Spanish method was not taught there, and the little cyphering ORTON may have known would have been taught him at his English school and not in Spain, therefore the sums could not be his working and probably were CASTRO'S. It only remains now for me to wish you "God Speed" in the herculean task before you. I shall ever feel indebted to you for the consideration you have shown me, as well as for the honest, honourable and courageous fight you have made, and which has stamped you in the eyes of all men—even your opponents—as being not only the most powerful man at the Bar—but the most honest, a distinction that not many can lay claim to.—Ever yours sincerely, RIVERS.

Tuesday Night, December 2nd, 1873.

MY DEAR KENEALY,—I enclose you TICHBORNE'S answer, read this morning, and confess I think he speaks the truth. As to him it looks very ugly, but still there is nothing to disprove his 'Osprey' story, and no reason why the Steward of that vessel should not subsequently have got into prison. Still, of course, the lies he has told as to his subsequent life fairly entitles both Judge and Jury to discredit any statement of his. But I feel convinced he *did* pick him up, and that the recognition was genuine on both sides. If he can prove his 'Osprey' existence to be true, I think the rest don't signify, and measures ought to be taken for this. I will send you up some game in a day or two. —In great haste, yours sincerely, RIVERS.

It would seem that about this period Mr. WHALLEY applied to Lord RIVERS, to make some enquiry *as to a relative of* LUIE *who was in service at Marlborough House.* Lord RIVERS declined.

Tuesday Night, December 4th, 1873.

DEAR MR. WHALLEY,—I cannot make any enquiries at Marlborough House, because the Prince once found great fault with me for the part I was taking in supporting TICHBORNE'S cause! I do not see that it signifies a rush whether LUIE has a relation in the position you describe or not. I fear it is too conclusive that he has told lies as to his mode of life latterly, and that fact will act prejudicially against TICHBORNE, because the world will (and does) believe that the whole story was trumped up to suit TICHBORNE'S cause, and that he was a party to the fraud. I feel convinced that LUIE'S story was true as regards the 'Osprey,' because TICHBORNE is much too sharp to pretend a recognition of a man which is not genuine, and there can be no reason why his 'Osprey' story should not be true, although he may have subsequently been a great scoundrel. It appears to me that the best and only course to pursue to carry out our mutual wishes—proving the iniquity of the Prosecution and the truth of TICHBORNE'S original story—is to find means *at once* of proving the existence of the 'Osprey,' and LUIE'S connection with it. The said LUIE may have had any amount of ancestors, but equally be a ticket-of-leave man.—Yours very truly,

RIVERS.

Sunday, December 14th, 1873.

MY DEAR KENEALY,—I am writing to TICHBORNE to say I have accidentally heard he is going to bring an action against WHALLEY for the £100 cheque, and do my best to dissuade him. No doubt you are right in all your surmises as to him and the other numerous scoundrels by whom this poor wretch has been surrounded. I confess I did not think (although I am now as convinced of it as yourself) that such devilry could have been allowed to prosper, as I feel the result will show it has. Still the Trial has unmistakeably proved two things, on which, if any sense of honesty and fair play exists in the minds of any out of the twelve men sitting in judgment on him, he ought to be saved from a conviction. They have signally failed to prove him ORTON, and you have proved equally plainly that there was an 'Osprey' in Melbourne at the proper time, and that the crews of vessels were in the habit of going off at once to the diggings. Were I on the Jury I should feel bound to give the Prisoner the doubt, whatever my own feelings and ideas might be, when the Prosecution fail in the promise they made to prove him ORTON. He is proved beyond all doubt not to be ORTON, as is admitted now by all unbelievers of his being TICHBORNE—and if not ORTON, who, after seven years of espionage, can he be? He must be somebody, and with the proof that he is *not* ORTON coupled with the evidence that he *is* TICHBORNE, I still cannot think that perjury can be brought home to a man without a clear proof of who he is. The moment he is proved to be anybody I will throw up the sponge of belief and confess myself wrong. Until then I shall remain as convinced as I am of my own identity that he is TICHBORNE. However, what you have to grapple with is the only question for consideration, and not what I think. Our only hope is in your being able to make an impression on some one or two of the Jury, and I am still not without hope of your success. To my mind it seems the break down of the ORTON theory; and the existence of the 'Osprey' coupled with the cyphering and the Sandhurst papers are your strongest points; and such an appeal as you so well know how to make, showing the injustice of convicting on perjury when after seven years they cannot prove the man charged to be anyone but the man he asserts himself to be—but it is idle and useless my telling you what I think. Have a talk with SPOFFORTH if you can, he may possibly give you some hints which may be useful, whilst I cannot. It is possible I may run up the end of this week or a day in next for a night, and so hear what you think.—Yours sincerely, RIVERS.

P.S.—Have you seen the enclosed in the 'Bristol Times and Mirror' of December 5th?

(Extract enclosed.)

THE WITNESS LUIE AND HIS BRISTOL ASSOCIATIONS.

There is a general impression amongst those acquainted with the circumstances that the Witness LUIE in the TICHBORNE Case is a man who was tried in Bristol for bringing a false charge against THOMAS CANNING, Esq., of having attempted to bribe him in a municipal election some twelve years ago. The man, who is a Swede, and went by a name resembling in another language that of LUIE, stated that Mr. CANNING came up to him in Queen-square and offered him half-a-sovereign for his vote. It was not necessary to refer to Mr. CANNING'S high character to show the utter untruthfulness of such a statement, for the simple facts that this man had not a vote, and that he was in the employment of a firm, the principals of which were Liberals—all being known to Mr. CANNING from frequently seeing him in connection with the shipping—would have been sufficient to disprove any charge of the kind. The person to whom we allude was prosecuted, convicted, and imprisoned. We believe that he got back to a situation for a short time in Bristol, but he afterwards left the city, and it is thought that he then commenced the course of life which the Witness LUIE is alleged to have followed. From inquiries made last night we find that a man who gave the name of CHARLES LUNDGREN, and who is believed to be LUIE, was committed to the City Gaol, on the 29th of April, 1861, on a Civil Suit, at the instance of THOMAS CANNING, Esq., for a debt of £87 2s., and £1 5s. costs, for an indefinite period. On the 17th June following his term was commuted to 25 days, and he was set at liberty on the 11th July following. On the 21st October, 1862, he was convicted at the Bristol Sessions, before Serjeant KINGLAKE, M.P., Recorder, on two indictments, the first of which was for stealing in the parish of St. Augustine's, Bristol, a bill of exchange for the payment of £248 2s. 3d., the property of ERNEST AUGUST HENELIUS, master of the barque 'Olka,' then lying at Newport; and the second for obtaining by false pretences, from WILLIAM POULETT TRATMAN, four tierces of beef, value £18, and a cheque for the payment of £151 13s. 3d. He was then sentenced to penal servitude for three years, and was removed to Millbank Prison under a warrant issued by the Secretary of State for that purpose, on the 26th March, 1863. The Prisoner was described as being 46 years of age, and an interpreter.

Our Cardiff correspondent telegraphs:—"With reference to the rumour connecting the Witness LUIE with a person named LUNGAN, an examination of the Cardiff Police Records shows that in September, 1867, a man bearing the name of LUNGAN was charged before the local Magistrates with obtaining £20 from Messrs. R. W. PARRY and Co., shipbrokers, Cardiff. On that occasion evidence was given to prove that, about ten years previously, LUNGAN was a Clerk in the Prosecutors' office, but for some years past had not been seen in Cardiff. On the day named in the charge he entered the office of PARRY and Co., and represented himself as Captain SAFSTROM, of a vessel belonging to the Prosecutors. By these means he succeeded in getting an advance of £20, but the statements under which he obtained it were afterwards proved to be false, and the Court of Quarter Sessions sentenced him to seven years' penal servitude. It will, perhaps, be remembered that LUIE made reference to a visit to Cardiff in the evidence given by him at the TICHBORNE Trial."

Tuesday Night, December 18th, 1873.

MY DEAR ONSLOW,—I quite agree in all you say as to LUIE. However great a blackguard he may be, I firmly believe he was Steward of the 'Osprey,' picked up TICHBORNE, and that their mutual recognition was genuine. But there seems to be little doubt of his rascality, and of his having lied as to the events o his latter life, so that Judges and Jury are sure to discredit all he says of earlier days; besides which, people already most unjustly say that the whole thing was got up, and TICHBORNE is a partner in the fraud. This I am convinced he was not, and that he recognized the man, and knows he is the man who saved him. However, action, and prompt action, is what we want, and as has been the case throughout this Trial, we want a man to act *speedily*, and with *judgment* and *secrecy*. If it can be proved that this man—be he LUIE or LUNDGREN—served on board the 'Osprey' at the proper time, his subsequent rascality does not signify a rush. If you know how at once to get this information set about it *at once*. KENEALY will not, I think, speak longer

than up to Christmas, and no time should be lost. I will find you £100 if you think you can employ it with advantage—only act with caution and dispatch. Not a day nor an hour should be lost, and I would tell no one what I was doing.—Yours sincerely, RIVERS.

Borrow the money if you have not got it, and I will send you a cheque when you like.

Monday, December 22nd, 1873.

My Dear Keneally,—I am convinced the Trial will end in a disagreement, and for all his bitterness it is not quite clear that the Jury will not be told in the Summing-up that to convict, the man must be proved to be somebody. No honest man can say he is Orton; and there are *some* honest men in the Jury-box. And if it were not for the bitterness shown by one or two, I even now should not despair of an acquittal. The Luie episode is a mystery I can't unravel. Of course I believe Luie to be Lundgren and a plant; but there are people who believe and think they can prove the Lundgren who gave evidence was a Convict. Anyhow, as he can be proved to have been shoeless and penniless a short time ago, and is now full of money, they must both be in the pay of the Treasury. The idea among the police from the few words Luie said in Bow-street, is that he referred to the Prosecution when "he was urged to do it." He was remanded, and a day named for his reappearance. Money was sent to pay a lawyer to cross-question him; but he was had up prior to the day named, and quietly shipped off to quod. Can anything be done—any demand made for his statement, since the inference is that he was put up to it by the Defendant? Tichborne gave me the whole account of his first calling in Bessborough-street, where he would not see him, and sent him to Poet's-corner—there, unfortunately, he fell in with Whalley, who was in the trap in a moment; and Whalley is the man *I* most distrust in all the various phases of the Trial. Tichborne says before he saw the man, he had a dim recollection of his having talked Spanish; and therefore as a test, not as a recognition, he said, "Como esta, Luie," but that it was stated in the brief drawn by Hendricks that he *denied all remembrance of the man*. He also says he told you this in Court, but that you would not listen to him. Surely if that is so, it ought to be made known. The man got his story up verbatim from Tichborne's own version, and therefore thoroughly believed in him, as was natural—but he went beyond his knowledge as to cargo, &c., which Tichborne never pretended to know. I send you letters from Onslow, which you need not return. Before the Luie business burst, I, at Onslow's request, gave him £18 to telegraph to Australia; when the bubble *had* burst, I supposed my £18 were saved, but you will see what he says. Another thing also I want to ask, now that both Tichborne and Onslow have these letters proving McKenzie took the leaves out of MacAlister's book, cannot you re-open enough of that to mention it, the evidence not having come in time for cross-examination? It may not be *law* as the Witness is gone, but it would help to show the Jury the iniquity of the Prosecution. Another thing also, Spofforth promised to see you, but I fancy has not had the time; and he wanted to set you right as to the present possessor of the estates. The C. J. corrected you, and said the estates were still in abeyance. Such is not the case; an order from the Court of Chancery (I believe Cockburn himself) gave the estates *at once* to the infant. This ought also to be made known as an additional reason for the animus shown. Now I have wearied you enough, and am going to pass the rest of the day in trying to discover if anything can be made out of this Lundgren story. My advice is not worth much, and that commodity when given unasked often creates offence. I can only hope it will not on this occasion. I would have you stick to each phase of the Case and finish it; abridging it as much as is consistent with your power of squashing it, so as to show the Jury you have the wish to release them. If, as is pretty certainly the case, their minds are now all made up, wearying them can't do good. Do not seek to be down upon the Bench. You have shown your pluck and had the best of all the rounds; and after all the mental and bodily exertions you have gone through, do not despair or throw up the sponge when a little more effort on your part will give you the greatest position of any man at the Bar. Before your Speech began you told me you should wind up your peroration with a reference to the infallible truth of a mother's recognition. Luie has done a deal of harm, but we are told that out of all evil comes good, and it gives you a fine opening in the unanimous opinion of the man's guilt when recognised by his *wife*. Why is not a mother's recognition to be equally conclusive? How I must have bored you!—Yours ever, RIVERS.

Monday Night, December 22nd, 1873.

My Dear Keneally,—Don't be alarmed, I am not going to give you another such infliction as this morning, but after dispatching that volume to Gray's Inn I went on the Luie trail and really believe that iniquity can be brought to light. Rimell who is not only a zealous but a sensible partisan has it in hand, and from all he has discovered I have requested him in your absence to ask Mr. Wyld for advice how to act. Something ought to be done at once, and I am pretty confident that such a show up may with common prudence be effected as will turn the Luie episode into a great card in our favour. It might have been so already, but for McMahon's forgetfulness in not showing you a letter, afterwards found under his seat in Court. I believe Mr. Wyld to be zealous and honest, and therefore have advised Rimell's going to him for advice how to act. That it is a plant is beyond all doubt, and I really believe Luie to have been a truthful Witness, at any rate as regards the 'Osprey.' But you will no doubt soon hear more.—Yours sincerely, RIVERS.

Sunday, December 28th, 1873.

My Dear Keneally,—Thanks for your long letter received this morning. I differ with you as to Tichborne knowing whether Luie was true or not. He firmly believed in him, as was natural, when he gave the exact account that he himself had always given; but he never recognised him, as you will see is borne out by the enclosed note from McMahon. Luie said things about the cargo which Tichborne could not have known, and which, had he been aware of, he would have stated at the outset. Luie of course was a plant, and a most successful one, and was put on when the Arthur Orton representative did not take, but I have my doubts now about his being Lundgren; although if this Luie was the mate of the 'Osprey,' I daresay he has committed some rascality since, and may have been at the very time he made his statement a Convict, which ensured his not bolting. Rimell assures me he has ascertained beyond a doubt that this Luie has been recognised by many Russian Captains now in the docks as a man they knew at the time of the 'Osprey;' and more than that, he has also discovered that the Witness Lundgren stated his having lived at a certain time with a certain firm, *which firm was not then in existence*. He (Rimell) has a friend who during the Crimean war was in daily contact *in London* with this same Lundgren. Lundgren was lost sight of for years, but within a few years has appeared again penniless and destitute, and been frequently relieved by Rimell's friend. Just at the time of the Luie episode he appears again well dressed and in affluence. Lundgren has crooked fingers, a bald head, and is ruptured. He is very like Luie. Luie went with Rimell to be photographed, and in contradiction to the story in the newspapers about his being unwilling on the subject, he took the greatest pains to be well done, *both with his hat and without it*.

When Luie was remanded until a certain day, Whalley sent money to pay a lawyer. He was brought up again *before* the day originally named, and at once sent off to Prison, where no one can have access to him. He is not now indicted for perjury, that part of the farce is to be enacted hereafter, *when the Tichborne Trial is over*, because in perjury he could have a lawyer to defend him, whereas now he is only working out his original punishment. Lundgren, the Convict and supposed Luie, entered Prison 5-ft. 7-in. in height, and either on entering or leaving there was a difference of a quarter-of-an-inch, which was taken note of. When Luie was measured on the last occasion, they made him 5-ft. 7¾-in., and probably made him as low as they could. Rimell is my informant, and if you think it desirable to see him he will come to you. He lives at 29, Golden Square, and you will find him both truthful and sensible. From all he tells me my belief is that both Lundgren and Luie are in the pay of the Government; that Luie *was* with the 'Osprey,' and that whether or no Luie was a Convict they have palmed off Luie as the original convict Lundgren. Rimell has seen Lundgren, and says there is a great likeness between him and Luie. He also saw the crooked fingers, and his friend who knew him so well years ago says he was ruptured. Luie swears he is not ruptured and wished to be examined, but was not. I still think you are unduly hard upon Tichborne, and do *not* believe in the stories told to you about his squandering money on women. You have proved he is not Orton, and that an 'Osprey' of the size he described was in Melbourne at the proper date. They may not choose to make him Tichborne, but they must make him somebody to convict him, and if all laws of evidence are not set aside, they cannot make him Orton, and therefore he cannot be convicted; and if this Luie roguery can be brought to light he must win his Case. I hope you are feeling all right again, and fit for the coming fray.—Yours sincerely, RIVERS.

No date.

My Dear Keneally,—As you never mention the Luie episode I conclude you have either not seen Rimell, or that you think nothing can be done. There is no doubt it has done the cause an infinity of mischief, and through not knowing the truth people (even his own adherents) accuse him of being a party to the Luie fraud. As you and McMahon know that so far from countenancing the fraud, Tichborne stated his non-recognition of the man, would it not be fair as well as possibly advantageous if before closing your Speech you showed how innocent Tichborne was of the whole affair, and as the man must have been put on by somebody how clearly the fraud points to the Prosecution. That he firmly believed in the man, was only natural when his evidence was made up of Tichborne's original statement; but as his non-recognition of the man is in black and white it seems to me only fair that the public mind should be disabused by you on that point. The ear and thumb may be open to wrangle on the score of the daguerreotype, but the tattoo is a matter of evidence, as are the ears as regards being pierced,

and the Jury *dare not* ignore all you have adduced in favour. Don't be too downhearted. I don't claim "to be always right and wise" and never the latter, but on this occasion you will see I shall prove right as to the impossibility of a conviction.

If you do write (and I don't ask) either Tuesday, Wednesday, Thursday or Friday, address to me, Heron Court, Christchurch; where I go on Tuesday. The owner, Lord MALMESBURY, is a firm believer in TICHBORNE.—Ever yours sincerely,

RIVERS.

SIR R. TICHBORNE TO G. ONSLOW, ESQ., M.P.

We insert two of the Defendant's letters here on this matter of LUIE. The "P" referred to is Mr. POLLARD, one of the Sub-Solicitors to the Treasury. See *ante*, page 38.

November 29th, 1873.

MY DEAR ONSLOW,—I sincerely hope you are better than when I saw you in Court. I have been out and hastened home to be in time to drop you a line to ease your mind about LUIE. He slept at RIMELL'S last night, and nobody has troubled him since. I firmly believe it was a got-up affair by P. LUIE wanted to go to the Treasury to get his money, but RIMELL persuaded him not to do so. A more abominable attempt to prejudice the minds of the Jury I never heard of. P. must have known the Case was closed, and that he could not call further evidence. I will send you a telegram on Monday at one o'clock, for I know you will be anxious to hear what takes place. Will you send WILLIAM or somebody then to get it for you? Enclosed I have sent you some cartes and cabinets—let me know what Mrs. ONSLOW and yourself think of them. My dear little TISSIE is growing such a beautiful creature and so affectionate. Please remember me to Mrs. ONSLOW. With kind regards believe me, yours truly,

R. C. D. TICHBORNE.

DEAR ONSLOW,—You say I don't answer your questions as to how LUIE knew what the cargo of the 'Osprey' consisted in. You might as well ask me how I know there is a bottom to the sea. The longest conversation I ever had with LUIE was on the first occasion when WHALLEY brought him to my Chambers. After that I never had a conversation with LUIE that lasted more than two minutes. I regret you were so indiscreet ae to write that letter to LUIE. PULLEYN knew it was there, and promised to bring it to me, but gave it up to CLARKE and WHICHER. I hear that he has given all the information he could to those two individuals. I shall be glad when to-morrow night comes—I am so unwell. I get the cramp in the bottom of my stomach three times a night.—Yours truly,

R. C. D. TICHBORNE.

It is very difficult to write in Court.

MR. WHALLEY, M.P., AND JEAN LUIE.

MR. WHALLEY'S connection with LUIE has been pretty fully detailed in the INTRODUCTION, and to that Volume we refer our readers. Despite all the evidence, Mr. WHALLEY persisted to the last in his faith in LUIE. The following, which deserves preservation, appeared in the 'Times,' of Monday, January 12th, 1874:—

TO THE EDITOR OF 'THE TIMES.'

SIR,—The proceedings at Bow Street, in the case of JEAN LUIE, in which a Detective Officer repeats statements alleged by him to have been made by the Prisoner of a most libellous nature, without notice to those who are thus attacked, or the slightest opportunity of contradiction, explanation, or reply, seem to me to throw much light on the conduct of this TICHBORNE Prosecution, and justify me, therefore, in asking your insertion of the following statement.

On the 1st inst. I addressed a letter to Mr. JOHN GRAY, the Solicitor of the Treasury, requesting to be informed when LUIE would be again on his Trial, stating that I had ground for believing that, notwithstanding what had previously occurred, the evidence given by him on the TICHBORNE Trial was substantially true, and the evidence given against LUIE was not reliable; and I repeated the request many times before addressed to him, that he would allow me to submit for the information of the Treasury the fult report of my inquiries in America as to this man, and the grounds on which I believed that any statement or confession made by him under existing circumstances calculated to impair that evidence was not reliable.

The only reply given to me is that I must look to the newspapers for the information I desire, and, accordingly, in my amazement, I read a few days afterwards the extraordinary statement of Detective Officer CLARKE as to what LUIE has, as he alleges, confessed to him, and which, so far as I am concerned and also in other respects within my own knowledge, is an absolute fiction.

I never saw or heard of LUIE till the 7th of July, when in my presence at Poet's-corner he gave the account of his rescue of the 'Bella's' crew exactly as he subsequently gave his evidence in Court; and he told me, in answer to questions, that the Defendant would recognize him by his crooked finger, as, in fact, the Defendant did, under circumstances that precluded the possibility, on the part of either LUIE or the Defendant, of concert or collusion.

I never again, to the best of my recollection, exchanged a word with him on the subject before he gave his evidence, except on two occasions—once when I took down his statement for guidance on my visit to New York, and received from him letters which I believed verified his statement, and a second time on my return from America, when he also explained to my satisfaction the discrepancy as to the New Bedford 'Osprey'; and I can distinctly contradict, as to the crooked finger, what is so ingeniously imputed to the Defendant in connection with young BOGLE.

In your report of the proceedings at Bow-street it appears that a solicitor desired to speak on behalf of Mr. ONSLOW and myself, but, having no knowledge of the inquiry, I had given no instructions to anyone, and I know of no means open to those of whom the Detective Officer was permitted to speak to defend themselves.

The only fact mentioned by Detective CLARKE in which there is the slightest truth, is, that I sent LUIE £5 and also a letter, neither of which reached him. As to the letter, it was returned to me by Captain NICHOLSON with the statement that he was not allowed to present it or to see LUIE, except in the presence of a Warder. As to the £5, it was sent by me in reply to a letter which I received from LUIE.—I am, Sir, your obedient servant,

G. H. WHALLEY.

Plas Madoc, Ruabon, North Wales, Jan. 9, 1874.

To this we append observations by the same gentleman; reprinted from the ENGLISHMAN, No. 236, and which appeared within a few hours of Mr. WHALLEY'S death. They are his latest remarks on the subject. We do not agree with them: but they deserve presentation here.

MR. WHALLEY, M.P., ON THE LUIE INCIDENT.

I am so much urged from various quarters—friendly some, and others (for the most part) very much otherwise—to "give explanation" or state my view as to the bearing of this incident on the TICHBORNE Case, that it appears to me I should do so at once, convinced as I am that, looked at from every possible point of view, it tells in favour of the Defendant. It will, like the mass of evidence that has been left uncalled, be of no use if longer deferred—except so far as I may be personally concerned. To defend myself as some of the newspapers call for is the very last thing I should attempt. That any should recognise the possibility of my having coached him (LUIE), or acted otherwise than as I stated in my evidence when I was in the Witness-box is what I will not assume, and if otherwise, I make no reply. It has been suggested by those favourable to the Defendant's Case that LUIE is either a voluntary impostor who has attached himself to the Case on speculation of some advantage to himself, or that he is a "plant," that is to say, has been employed by the Detective Brigade of the Prosecution to identify himself with the Defence for the purpose partly of obtaining information, and, of course, for bringing about what has been up to the present time a collapse or catastrophe in the most critical moment of the Trial. Against either of these theories there appears to me to be evidence as conclusive as it is possible to bring against any such propositions; but before stating the reasons why LUIE cannot with any regard to probability or possibility be either an impostor or a plant, I will consider what bearing this incident has upon the Case, assuming that he is either the one or the other, and that his evidence is utterly false or unreliable. The Defendant and his advisers—whether wisely or not is immaterial—did not at once avail themselves of this evidence, but, on the contrary, insisted upon his affording substantial corroboration before they would even offer him for whatever he might be worth to the Court; and the inquiry which I made, and my Report, absolutely required in the most prompt and urgent manner that he should be instantly called, so that, in my opinion, his story was true; and this casts upon myself alone the entire responsibility of his being so called, and that responsibility I most readily accept, standing as I do to every word and sentiment in my full and detailed Report* of my proceedings in America. The caution then exercised by the Defendant's advisers in not calling a doubtful Witness is as strong a proof as they could give that their other Witnesses have been to the best of their belief honest and truthful. LUIE was avowedly a good Witness when first examined, and left the box unaffected by cross-examination or otherwise; and was actually on his way to America, and could not have been exposed to their rebutting charges but for prompt and energetic action on the part of the Defendant recalling him while on his way to Southampton; and as he had promised them to lose not a moment in looking up old messmates of the 'Osprey' and other confirmatory evidence, it was greatly to the damage of the Defendant that he was urged to remain on parole, as he was in England from the 17th of October to 29th November. Is it not reasonable to ask how could the Defendant, if conscious, as he must be if not TICHBORNE, that the story was fabricated, have allowed this man, who had so completely established his case, to be exposed to the absolute certainty of the exposure of such fabrication? and what better evidence

* Mr. WHALLEY'S Report of his visit to New York appears in the *Introduction*, pages 272-278.

could be given of the Defendant of the truth of his own story about the 'Osprey' than his accepting and abiding under such circumstances the confirmatory narration of LUIE? Whether, therefore, LUIE be a Plant or an Impostor, it is clear that by some means or other his story of the 'Osprey' rescue, however he got it, was in accordance with the recollections of the Defendant, and therefore, indirectly, thoroughly corroborates him, and that he could have got at that story by any other means than such as he describes of being present when the 'Bella' boat was picked up, and that he nursed the Defendant through his semi-stricken voyage to Melbourne is not, so far as I know, suggested; and this should be borne in mind in considering as follows the theories of his being an Impostor or a Plant. First, as to Impostor—the man was first seen on the 7th of July, and from that day to his appearance as a Witness on the 15th of October was a common topic of talk and observation throughout the country—referred to in Court by the Counsel for the Prosecution and by Dr. KENEALY in his Speech—investigated in America by myself—and above all, the constant object of watch and close attention by the force of Detectives told off at Scotland Yard for this special Witness—and this is proved and strengthened by his own Complaints at the Home Office and Scotland Yard and by the promise of Mr. CLARKE, the Chief of the Detectives, to him. As it was essential to provide him with lodgings—and as a foreigner never before in London, some supervision—he was given in charge to Mr. PULLEYN, and lived with him about half-a-mile from Westminster-bridge, for about four months; in frequent attendance at Westminster when the Trial was all this time going on, and at the Defendant's office, 2, Poet's-corner. Mr. PULLEYN, the person in whose care he was placed, is an intelligent man; was employed by the Defendant in getting up public meetings, and he took LUIE to many of these meetings; and after the Defendant was prohibited from availing himself of such means of getting money for his Defence, Mr. PULLEYN got up meetings for LUIE at St. James's Hall and elsewhere; exhibited him as publicly as the Defendant himself had for years been under the eye of the public. Is it possible that a ticket-of-leave-man, for whose proceedings the police are specially responsible—whose photo and all requisite identification constitutes a leading part of the duties of Scotland Yard—could have escaped detection, first between 7th July and 15th October, and then again till after 29th November? According to the cumulative evidence poured in upon the Court on 29th November and following day, the man had spent most of the years since 1852 in gaol or under the eye of the Police in various parts of the country, but although long before the 29th of November his own Photo as LUIE, the famous 'Osprey' Witness, was all over the country, it was even then not by the Police, but by some indirect communication to a Mr. BOWKER, the brother of one of the Solicitors in the Case, that HOFFMAN and Co's clerks clearly identified the LUIE portrait with their Captain SORENSEN, and it was days after that the Police brought forward the Photo and the evidence as to the Chatham Convict LUNDGREN. I know little beyond rumour of the subsequent disproofs of this identity of LUIE with LUNDGREN, and I take my stand solely on the facility with which identity evidence can be organized, and either by error or design can mislead (most especially Photographic identity), against the overwhelming improbability of LUIE, if a ticket-of-leave-man, having entered on such a venture and having carried it through to the last as he did. Look at it as a whole, or in detail, and it is alike incredible. The man is not a fool, yet what but utter folly could induce him to incur the risk of detection on behalf of the Defendant, who had nothing to give and gave him nothing? And why should he consent to five months' daily contact with his natural foes, the Detectives and Police; actually boarding them as it were at the Home Office and Scotland Yard, and inviting their scrutiny and attendance upon him? And why again did he not make off when by the gifts of Mr. ONSLOW, myself, and others, he had successfully reaped the fruits of his adventure, and then on his parole of honour alone await the inevitable detection and punishment he might expect (but which did not in fact arrive) from Mr. PURCELL'S visit to America? And why even after the SORENSEN and LUNDGREN evidence when free upon the bail I had given for him did he not make away and reserve himself for such further enterprise as such skill and luck qualified him to undertake? Can there be a doubt that Scotland Yard in all its departments is utterly useless for the duties of Police and Detectives if a ticket-of-leave-man could live and carry on under their eye for five months so atrocious a fraud? And is it conceivable that the Defendant himself if he be not TICHBORNE could allow such an accomplice as LUIE to involve the fate of both of them in such needless and gratuitous risk? No one can for a moment rest in such belief; and therefore so far as they accept the evidence of LUIE being LUNDGREN the Convict they are driven to the alternative of his being a Plant. If possible this is more incredible than that he escaped the vigilance of the Police and Detectives; who by the Theory of Plant used him for their purposes; for known as he must have been throughout the Police Force as their Convict ally it is not probable but that some rumour of such a scheme would have got abroad. Surely the five months' attendance of LUIE at Westminster before or after his examination as a Plant does not support this; it could not have been the policy of the bold clique of Detectives, by whom it must be supposed to have been organized, that he should have left the Witness-box unbroken in his evidence; but on the contrary that would have been the occasion for his premeditated breakdown, covering thereby the Defendant with the discredit of producing a false Witness; and assuming that the Treasury Solicitors who sent Mr. PURCELL to America were not in the scheme, what possible object could the concoctors have in subjecting the Treasury to the awards of proceeds of extra costs in these American enquiries and Witnesses? And this applies specially to the New Bedford case. On my arrival at New Bedford I found that our Government had for weeks previously been in telegraphic and written communication with our Minister at Washington, and through LUIE and the United States authorities with Mr. ALLEN, the Chief of the Customs at New Bedford. On my visit there I did not know the reason of my failure to discover the real 'Osprey,' but I recognised and told Mr. ALLEN that my inquiry was a failure, and I dictated to the local newspapers a paragraph to the same effect, and had Mr. ALLEN not been prohibited by the Court from stating it, he would have narrated how I requested him to advise our Government and his own to give no more time, trouble, or cost about the New Bedford 'Osprey.' To suppose that the clever Detectives who had concocted this plant would allow their employers to enter upon so wild-goose an expedition as that of Mr. PURCELL to America, and to carry it out—in spite of my special warning—to such absurd extent and enormous cost, and to follow up in the Court of Queen's Bench the doings of a whaler 'Osprey,' is to declare the Force of Detectives and Police, not merely useless, as they would be if they had failed to detect a Ticket-of-leave man, but actively vicious, mischievous, and stupid beyond all possible belief even to their employers. Whether as a Voluntary Impostor or as a Plant, LUIE must have known that the game was up when I started for America, unless I could be reckoned upon as an ally; and I refer to my Report as containing all necessary proof that his story was true. And I am prepared not only to support that Report on oath, as in fact I have done, but to contradict every material statement of Mr. PURCELL which is at variance with it. On my return to England instead of finding LUIE gone, tired out as he might well have been by such sensible detention as he felt it to be, with nothing to do, as I ascertained, in need of money to keep good his wearing apparel, he at once cleared up every difficulty I had met with, as well with reference to the failure of my inquiry at New Bedford, as otherwise; and then from my own personal knowledge I declare my belief confirmed by this inquiry in America, and unshaken by the evidence against him, that he was truly in the 'Osprey,' and helped to rescue the wreck-boat of the 'Bella.' I again refer to and rely on my Report for various details on which my confidence in LUIE'S story rests. So far as I have heard and known, there is not one single act in the conduct and proceedings of LUIE, from his first appearance on the 7th of July, to his committal to prison on the 3rd of December, when the Treasury refused the second bail offered (I still standing as one with the amount increased from £300 to £500), that is not utterly inconsistent with, and in many respects absolutely contradictory of the theory of impostor or plant; and if anything remained in doubt thereon it may fairly be deemed to be removed by the subsequent proceedings in regard to LUIE and his confession such as it was before Sir THOMAS HENRY at Bow-street. As I have no personal or certain knowledge of what has occurred since LUIE'S committal to Prison, I will say no more than that the confession he made when brought up for that purpose two days before his remand expired, was fully expected and expressly foretold by myself. I had much personal knowledge of the conduct of the Government and their agents in the Case of Dr. WHEELER, CROOK, ROUSE, CHARLES ORTON, and other Witnesses; also of the peculiar device by which their non-identity evidence was concocted in Ireland, viz., by telling people that the Defendant was above six feet high, and when they came expecting to see such a man and hesitated, threatening to prosecute them for fraud and refusing expenses. Likewise the whole course of their proceedings, by Detectives and Police, all of which may, I hope, be brought before the public through the House of Commons, in spite of the rule of Court which prevents it being now discussed. From all this I was convinced that LUIE would be subject to such pressure as in reason he could not be expected—given up and abandoned, as he had reason to believe by the Defendant—to resist.

JEAN LUIE TO MR. WHALLEY, M.P.

Holloway Prison, 11th December, 1873.

HONORABLE AND LEARNED GENTLEMAN,—Yesterday was I examined by a doctor from Chatham Prison and the young man to-day brought into Court whom that d—d doctor swore that amongst other things I had been ruptured. As I myself know, that is barefaced falsehood, never having been or is so, I want you to be so kind and order independent medical men to open my body. I am ready to undergo any torture or even death itself, before I shall be made out what I am not. I have from a friend here (whose name I must not mention) learnt the address of LUNDGREN'S brother, and it would be most necessary to have him and his sisters to recognise if I am the man, as it would not take a week to have him here, and his expenses a few pounds for travelling, I think both in justice to themselves and me they would be willing, and that man you had the letter from respecting the 'Osprey' on February 13th, and living in Yorkshire; as well as the man that wrote to Sir ROGER knowing me—I sent a letter to Mr. RIMELL and

expected to see him to-day, but he did not come. Dr. K. as you know has done the greatest mistake a man can do, and as I have been days and days sitting in court by the Treasury Officials and heard all their conversation as well as the Counsels for the Prosecution insinuating that they had me now in their power and that I should soon let out all conspiracy. I have treated them all with contempt and no villainy and falsehood or by any promise shall they make me desert a true cause, *believe me Sir*, if hell itself opens its wide gulph, none of you in this Case shall be but exonerated; let them send me to penal for life, or hang me; I understand I am to be brought before a magistrate on charge of perjury, and that I am to be sent to another prison. My noble gentleman be careful with HARCOURT—everything I have told him he has informed the Treasury. I don't know what to think of HARDING? I am afraid to speak or even look at them. The first thing this morning HARCOURT came and told me, it is all right the doctors have found no rupture on you. That HARCOURT is selling you —Why did not Dr. KENEALY examine the other.—Your most humble servant, JEAN LUIE.

MR. WHALLEY'S REPLY TO JEAN LUIE.

Plas Madoc, Dec. 12th, 1873.

LUIE—I have your letter, and the gentleman who presents this is Captain NICHOLSON, my nephew.

Tell him freely everything you desire me to know or to do, and you may rely on my doing whatever any one can do to secure you justice.

I have refused to come up this week unless they will examine me as a Witness, and I find it is mere loss of time to talk or advise; but I will come up at any hour if I can see that it is useful to do justice to you, and that I find you to be what I have so earnestly believed—an honest man.

Tell freely and fully to Captain NICHOLSON, and he will write to me. —Yours, G. H. WHALLEY.

The following is Mr. ONSLOW'S view of Mr. WHALLEY'S expedition to New York.

MR. WHALLEY'S VISIT TO NEW YORK.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—I observe in your Newspaper many comments on Mr. WHALLEY'S conduct in the case of JEAN LUIE. I should like to have it explained how it was when JEAN LUIE gave Mr. WHALLEY written instructions to call on his daughter at a certain address in New York, he did not do so. Had he taken the precaution to do so, LUIE would have been convicted out of his own mouth, and would never have been allowed to go into the Witness-box. If Mr. WHALLEY had made the enquiry he would have found all LUIE'S statement about his daughter false. One would have imagined it would have been Mr. WHALLEY'S first duty on coming at New York to call and see this daughter, instead of which it appears Mr. WHALLEY contented himself with a wild goose chase after the 'Osprey,' leaving the one thing needful unenquired after.—I remain, yours obediently,

April 2nd, 1876. GUILDFORD ONSLOW.

INTERVIEW BETWEEN SIR ROGER AND MR. WHALLEY, M.P.

Sir ROGER TICHBORNE and Mr. WHALLEY were never friends after the unearthing of LUIE. Mr. WHALLEY used to enter the Court and sit among the Barristers behind Dr. KENEALY; but he and the Defendant never recognised each other. At this time some rumours reached Mr. WHALLEY as to the mis-spending of moneys raised for the Defence, and he both spoke and wrote to many of TICHBORNE'S friends in very warm language about it. This came to Sir ROGER'S ears, and inflamed his wrath. In an evil moment Mr. WHALLEY, yielding to a request of his son-in-law, called on TICHBORNE, when the following passed:—

Mr. WHALLEY: Sir ROGER, I have come to introduce my son-in-law, Captain FOOTE, to you.

Sir ROGER: I am glad to see Captain FOOTE, but I wonder you can have the face to visit *me*, after you have been abusing me to so many persons in the most shameful manner.

Mr. WHALLEY: What I have written about you I am prepared to repeat everywhere. I cannot allow you to collect moneys from poor people, and then to spend it in the way you have done. It is obtaining money under false pretences. You get the poor people's pennies, and you do not apply it to your defence. We all know how it goes.

Sir ROGER: It is *you* who get and then give no account of the subscriptions. I do not like to call you a Swindler.

Mr. WHALLEY: Call me what you like.

Sir ROGER: Then you are a Swindler.

Mr. WHALLEY: If you were not a bigger man than me, and if I were not convinced that you were Sir ROGER TICHBORNE, I would try to knock you down!

Sir ROGER: Go! go! you little Jew. You took up my cause not for *my* sake, but to get notoriety. You and —— have done me the greatest injury. Your picture company is bad. You have cheated EAST out of £100 which was intended for my defence.

Mr. WHALLEY: I went to New York and Canada for you.

Sir ROGER: You are a Scoundrel. You are the worst enemy I ever had. Your journey to New York has helped to ruin me. It was *you* who brought that villain LUIE upon me; it was *you* who found out Captain BROWN at Wapping. I repeat, you are my worst enemy, and a finished Scoundrel.

Mr. WHALLEY: Dare you call me a Scoundrel?

Sir ROGER: Yes, I do, and I would do it to all eternity.

Mr. WHALLEY: It is *you* who are a confirmed Scoundrel.

Sir ROGER: Leave my house this instant. If not, I will kick you out. And never dare to cross my threshold again.

Sir ROGER then rose, and was prepared to suit the action to the word, but Captain FOOTE dragged Mr. WHALLEY away, rather precipitately; and the "finder" of LUIE, and the "discoverer" of Captain BROWN, and the eulogist of "EVANS," never again ventured to face Sir ROGER TICHBORNE.

MR. SECRETARY CROSS AND JEAN LUIE.

Equally deserving of a place in this History is the Correspondence which follows. We print it without note or comment; and thus we take—as we suppose—final leave of this remarkable and daring man.

DR. KENEALY TO MR. SECRETARY CROSS.

Stoke House, Tavistock Square, London, July 3, 1878.

SIR,—I this day received the letter of which I append a copy. May I ask you to read it? It is dated, as you see, 18 days before it reached me. But this is nothing in the TICHBORNE Case; and perhaps it may be explainable.

I am unable to guess how it is that this gentleman came to write to me.

Whether he has done it to lead me into another network of plots; or whether, knowing somewhat, his conscience has really smitten him, and he is afflicted by remorse, I cannot say. Probably the prison authorities, or the Roman Catholic Chaplain could tell.

An able, artful, plausible, and intriguing man like this, is capable of concocting any design. The amount of skill, cunning and falsehood which he brought to bear upon the TICHBORNE Case often fills me with wonder. The Jesuits happily converted him from Lutheranism to their own purer faith, shortly before he received his ticket-of-leave, and got his instructions for the ruin of TICHBORNE. In wile and adroitness he is worthy to be a General of their Order; and I would gladly sign a certificate for his promotion. He might be even a Russian Cabinet Minister. I think he, and BENSON, and KURR, would have successfully represented this Country at the Berlin Congress; and if it is not now too late, I advise that they should be sent. Even the Chief Justice for a time, with his long experience of jail birds and jail life, appeared to have been deceived by LUIE. His evidence seemed so true, that it killed BOVILL—paralysed with grief, and anger, and shame—let us hope with repentance—for the part he had taken in the First Trial, which the testimony of LUIE had at last persuaded him was unjust. I wish *you* would go and see this man; he is a marvel of art and duplicity, such as perhaps you never met. I certainly, as at present advised, will not trust myself in his presence. He may be devising some new contrivance, as deep, and desperate as his former one: and having duped me once, I can have no faith in him again.

I wonder who told him that he ought to address his letter to Stoke House, Tavistock Square? Is there a Detective at Portland Convict Prison?

I suppose you know that I never saw LUIE until he got into the witness-box—albeit I have no doubt that many good people fancy that I coached him up, day and night, until I got him there. I was, myself, so scrupulously careful in that Trial, that I never saw a single Witness until he entered the Court. I had never a moment's interview even with BAIGENT. In fact I was determined to guard my honour above all suspicion, and I did so. I hoped to be, like BAYARD, *sans peur et sans reproche*. You see how I have been requited. But Mr. KARSLAKE, Q.C., and Mr. LOCOCK WEBB (now a Q.C.), saw LUIE for three-quarters of an hour, or more, at Chambers; examined and cross-examined him, and were so thoroughly imposed upon, that they gave me their fullest assurance, in the presence of Lord RIVERS, of his identity, his veracity, and his faith.

You are a man of large experience of men and things. Have an hour's talk with LUIE, and you will learn much. After that have an interview with TICHBORNE, and I think you will do right. You might travel incognito, like the great Caliph HAROUN AL RASCHID. Yet I fear me, that you will not. As yet you have not accepted my offer to see young ROGER TICHBORNE and judge for yourself. I doubt much whether you will ever do anything; and since you have not dismissed the "gentleman" who told you that MINA J. was not MERCIVINA C., I am rendered still more doubtful. You know she is; and so did this "gentleman" when he told you that she was not. I suppose you have noted the words "innocent TICHBORNE." If you have not, I have, and the country will.

I think LUIE'S opening statement must be false; namely, that he never heard of my ruin until April last. He begins, therefore, with what I cannot accept as true; in this he resembles your "gentleman." And if he commences with a lie, I fear there is

no good in him. I dismiss him as I think you should your friend.

The whole world has heard of that unparalleled act of wrong, and plenty of persons convicted since must have told LUIE in Prison of a crime wrought upon me which will for ever grow darker beside any crime of theirs, and stamp with infamy all connected with it.

The conviction of TICHBORNE was arranged and agreed upon long before he was tried—but *he* at all events had the semblance of fair play, and of being heard in his defence. He had ermined Judges and a Sham Jury. But *I* was "ruined for life" without ever having been heard. Nay, more, when I humbly applied to be heard I was insolently refused.

The whole criminal population of the country must have been deeply impressed and delighted by this fact; and I have no doubt that it has been as often commented upon in the presence of LUIE; as I hear that it has been discussed in Thieves-Kitchens. For, excepting murder, was it not a more flagrant crime than any of the Convict Prison inmates had themselves committed? And is there one of them who might not have said, and who, in fact, has not said, "Thank God I am not so guilty as those who destroyed KENEALY, without hearing what he had to say. Whatever I have done, I have nothing so bad as that upon my conscience"?

You yourself appear at times to think that treatment such as I have received is not laudable. I read in to-day's papers the following report of what took place in the House of Commons last night:—

AN UNHEARD DEFENCE.

Mr. H. B. SHERIDAN asked the Home Secretary whether his attention had been drawn to a case in which Mr. ISAAC SPOONER, a Stipendiary Magistrate at Brierly-hill, near Dudley, was alleged to have sent a married woman, aged 48, to gaol for six weeks, for having, as was stated, struck a policeman on the arm with her hand; and whether it was true that the Magistrate refused to hear the Witness for the Defence?

Mr. CROSS said he had received a communication from the Magistrate which, in his (Mr. CROSS's) opinion, did bear out the statement that this woman did bring forward Witnesses for her Defence, that they were not called, and that sentence was passed upon her. Under the circumstances he had thought it his duty to release the woman at once, as it could not be considered that she had had a fair Trial. (Hear, hear). The Magistrate's statement to him was that he did not himself hear at the Trial that there were Witnesses for the Defence. On this matter he was still in communication with the Magistrate.

But how comes this? Mr. SPOONER only followed the example set him by very high persons with whom you constantly associate; and he probably expected praise, not blame, for his proceedings. It will be a sad disappointment if, instead of leading to a Judgeship "under the new Judicature Act," or to high office, his conduct should insure him a first warning or a censure. I record the reversal of his unjust sentence, however, as a step in the right direction; and I shall claim your support when the Bar Discipline Bill comes on, because my Defence also was "unheard." PHŒBE NEWTON, after having served her six weeks for "striking a policeman on the arm with her hand," would have come out at the end probably not much the worse off, and would have been honoured as a heroine for the rest of her days for having so treated one of the "ministers of the law"—but *I*, who never assaulted a Judge, am utterly undone, without any Trial or Defence, and for no violation of any law, moral, human, or divine. And yet, so far as I know, you do not help to restore me as you have properly restored PHŒBE to the people of the Black Country. Let us hope, however, that this may not be always so.

But to return to Mr. LUIE.

He says that on the 2nd of May he asked your permission to write to me, and that on the 8th of the same month you granted it. For this I thank you. It may lead to nothing or to something; to fraud or to justice: but, as yet, I do not clearly see to what.

The facts to which he refers took place, he says, in October, 1873. I have searched through my memory to ascertain to what he alludes, but I have failed to find any of importance on my part. I know that about that period I absolutely prohibited him from leaving England; so fully was I then persuaded of his truthfulness and honesty. Had he sailed for New York, as he was very anxious, and as he was zealously urged, two things would never have been known: first, that he was a false Witness; second, that he was "a plant" by the Crown. One damaged TICHBORNE and his Cause; but the other has made millions detest, distrust, and despise "the authorities" in this country to an extent that you, as a statesman, receiving information from all parts of the Kingdom, cannot, and ought not to, ignore; and with a certain crop of evil fruit springing up everywhere which will survive this present generation.

To pollute Justice at its very source, as in this case, was a blow aimed at all that we reverence or hold dear in this land. This has been done; and though we may not at present perceive or realize *all* the evil, depend upon it that those tares which Satan has sown will in the end spring up in weeds—aye, and in seeds—of deadly poison.

Talking of poison reminds me of what happened to myself. Did LUIE know that they attempted my life several times on my walks back from Westminster? Did he get a hint from his Scotland Yard associates, with whom he was in friendly communication and conversation day and night, of the poisoned game that was sent to me? Or had he heard anything of the subsequent attempt which, unfortunately for me, succeeded, and debilitated me for life; and, fortunately for those who gave it, did *not* succeed, as it furnished them with the additional luxury of seeing me live, but trodden down physically, and "ruined" also; and this, as one of my own countrymen might say, "for nothing at all, at all"? Does LUIE know anything of this little trifle? If he be a true convert, his father-confessor should know likewise, but as this would be revealed *sub sigillo confessionis*, perhaps it would be hopeless to enquire of this latter reverend gentleman.

I cannot think what it is that this man wants to see me for, can you? May I ask the Jailer?

The mystery does not end here; he intimates that if he were free *he would make no revelation*. This is what I gather from his strange and obscure references to *terra firma*, and a *denouement*. Why should he not make a clean breast of it, if he were at large? Would his ticket-of-leave be withdrawn if he did? In this part he reminds me of Mr. GLADSTONE, whose letters and speeches I can hardly ever understand. There seems to be a most singular congeniality between both these great men; and oddly enough, one did almost as much to ruin TICHBORNE as the other. G. and L. will be for ever associated with other "eminent hands" in the History of the TICHBORNE Trial. Each might declare as to the conviction of TICHBORNE "Thou canst not say *I* did it;" and yet each contributed all he could to that fortunate event. I have two photographs of those gentlemen inserted in one frame, so that whenever I think of one I may always have the pleasure of seeing the "*counterfeit* presentment of the other." Henceforth I shall prize them more, since I have learned from LUIE's letter in what direction his theological studies proceed. The library at Portland evidently contains books in which their minds are deeply interested, and I shall now contemplate with new interest the features of those distinguished disciples of LOYOLA. I think it honourable to LUIE that he gives some token of contrition; but I fear that Mr. GLADSTONE is hardened, and that he never will confess his sins—at least to anyone but Cardinal MANNING.

I have besought him several times to undo what he has done, as I have entreated Mr. BRIGHT to be a man rather than a Privy Councillor. But I can do nothing with either of those personages. They will die and make no sign. Having dug a pitfall for themselves, into which they have fallen and are securely caged, they remain silent so that you and yours may slip into the same, and be in the like predicament. O, Lancashire lad, cannot you see this?

Mr. LUIE is angry with me because, he says, I "spat in his face," and did not stick to him as "the honourable Mr. WHALLEY" did, and he hints that all my subsequent misfortunes flowed naturally and providentially from this source. This charge is rather inconsistent with one which comes from another equally "honourable" quarter—I mean Mr. EVELYN ASHLEY, M.P. for Poole, who told his constituents that I called LUIE well knowing him to be a false Witness. Had I done so, policy would, perhaps, have advised me not to spit in his face, which our friend L. thinks that I did. But it is strange how Truth crops out, and Falsehood is ashamed. This letter of LUIE gives the lie to that man—whom every honourable person in the Empire already believed to be a Liar! LUIE must be content with the backer whom he has got. The "honourable Mr. WHALLEY" both told me, and wrote to me, that if I did not call LUIE he would denounce me from every platform in the kingdom. I yielded, and LUIE has got his reward, and his evidence assisted to undo TICHBORNE, and so to ruin myself, and to furnish Mr. ASHLEY with a theme for abuse; whereas, if I had allowed him to go to New York as I was solicited, none of these things might have happened. It would be a curious question for a moral philosopher like the Bishop of Manchester, to explain how it is that every honest and noble act I did in that Trial has turned to my own destruction. The almost forcible retention of LUIE from going to New York, against everybody's remonstrance—the positive refusal to sacrifice my Client to all suggestions of self-interest—the pertinacity with which I sought to uphold the dignity and "the independence" of the Bar, which are (as I have found) purely mythical, and have not existed since the days of BROUGHAM and DENMAN—the devotion which I showed to duty—my trusting faith in COCKBURN and the Judges, so proved by my positive interdict against the Parliamentary petitions against the first—my prevention of a bribe intended for a willing Juryman—all these things, which were inspired by an exalted sentiment of Right, have actually brought down upon myself a very avalanche of Wrong, and have given occasion to thousands to think and say, "Honesty is the *worst* policy. See how KENEALY was ruined because he did right!"

Some people in truth have written to me, that my career is positive proof that there is no GOD; or that if there be, He is no GOD of Justice, but the opposite; in fact, a SATAN. But this, I think, is a short-sighted view: for this life is not all; and perhaps my example, though destructive to myself, may work out some useful end. GOD, who suffers Bishops with thousands a year, allows many innocent people to pine, to starve, and be killed. He knows very well, that compared with the Everlasting, our days here are as nothing; and if we endure patiently

what happens, He can, if He thinks right, give us due recompense for our miseries. There are crowns of gold, and there are crowns of glory; and I confess I prefer the last to the first. I would not be COLERIDGE for all the diadems on earth. I would not be COCKBURN for his collar of S.S. inlaid with the most priceless jewels of Golconda.

I now come to a curious quotation in Mr. LUIE'S letter—I allude to the phrase *ex animo*. I think I have read this in PETER DENS, in Father SANCHEZ, in LIGUORI, and in other eminent lights and authorities of the Church. I fancy it was a favourite term of Sir JOHN COLERIDGE, and if I am not mistaken I have either heard Mr. GLADSTONE speak it, or I have read it somewhere in some of his luminous and voluminous essays and epistles. *Ex animo* sounds singularly strange from Portland Convict Prison. I confess it adds to the apprehension, which I feel, of having anything to do with a gentleman who uses it; although in the next sentence he sympathetically calls me "a victim," which I unfortunately am. But what are his "facts"? Facts, as it seems to me, do not require either "vast erudition," or "superior wisdom" to take hold of them; and I think it extremely doubtful, that this gentleman has any "written" evidence from COCKBURN, or COLERIDGE, or CAIRNS, or LOWE, or HOLKER, which would give me "substantial restitution." Written evidence in my case is not needed: the facts done in the face of the world are enough. As to "superior wisdom" I have lost all claim to it, since I sought to serve God rather than Mammon; and I find that my "vast erudition" hardly brings me in as much bread as a little leavening of cannie policy would do. It is better to be a sausage-seller than the greatest scholar on earth.

Mr. LUIE talks of a "certain person," but if this person be one of those four or five, I can enter into no "compromise" with such. Neither will I send as my representative to the "Convict Establishment, Portland," either HARCOURT or HARDING, of whom I know quite enough; though I willingly own that his "epistle" *does* take me by "surprise."

This being my resolve, you may perhaps ask me why I send you this letter, if it were not to solicit an order to see LUIE? I will tell you. He says that the "Opposition," by which I suppose he means the Jail officials and the Home Office, have known for upwards of three years by his "repeated" writing certain "facts," which he wishes me also to be made acquainted with. Now, sir, as every letter sent out of Prison is first read by the Jailers, and in many instances is copied into the books, my object in writing to you is to ask you to inform me what these "facts" are? If they are "facts" favourable to TICHBORNE—that is, if they tend to prove that LUIE was "a plant" either of the Home Office or the Treasury, I think these ought to make you release the unhappy victim of such an evil conspiracy. It is not often that the Crown is hampered by such valuable Witnesses as HOPWOOD, BELLEW, MINA, or the MACALISTERS; but the "plant" LUIE is "the crowning mercy" of the TICHBORNE Case. If again this man's revelations are connected with the wicked crime perpetrated against myself, then also I think you should inform me of them, and vote with me in my amendments to the Bar Discipline Bill.

One of the greatest marvels on earth to me is, why men in your place should ever shield rascality; whenever they do, it is always sure to be discovered, as in the case of BRUCE and O'DONOVAN ROSSA. Who now would not rather be O'DONOVAN than the wearer of the bloody coronet of Aberdare? And what a name of infamy will he leave to his wretched children—a name ever associated with Cruelty and Falsehood. Dr. JOHNSON once declared that nothing was easier than for a Cabinet Minister to be honest. A member of the Government who was present, said, that a Minister might be honest for a week, but could not continue honest for a fortnight. The doctor asked the right honourable gentleman, "Did you ever try it for a fortnight?" The minister was silent. Sir, I leave the moral to you; I will not ask you the question just now—though perhaps I may some day put it. In the meantime may I solicit you, with due respect, to think it over.

Consider also that, as so many strange things are brought before you every day connected with this "deplorable Case" (as Mr. GLADSTONE calls it), you would be acting both wisely and well if you were to relax a little in your obduracy to all information and to all appeals for further enquiry. No Case ever before tried has so stirred the heart of the country as this. No such grand opportunity was ever before presented to the Conservatives to finally "dish the Whigs," as is now offered, by the former simply doing justice. No man *can* know better than you the state of feeling among the millions on this subject. That feeling is in no way diminished in intensity from what it was. On the contrary, it is strong as ever; but it has assumed the dangerous form of silent, savage discontent with the tribunals of the country, with the administration of justice, and with the triumph of Might over Right. You are reported to have recently threatened horse and foot and fire and sword to put down the starving Lancashire operatives. These things have been tried many times by persons in power, but have always failed. If Lancashire were really to break out and to kindle fire in half-a-dozen places at the same moment, do you seriously think that soldiers or police could stop them? You know better. You may not believe that the fury felt in thousands of hearts, in the TICHBORNE Case, will ever break out in insurrection. Neither do I. But it is a terrible ingredient among many smouldering flames, which require only one great naval or military or financial disaster to bring to a head—and that head means REVOLUTION.—I have the honour to be, sir, with great respect, your obedient servant,

E. V. KENEALY.

JEAN LUIE TO DR. KENEALY.

[A., 1404. CARL P. LUNDGREN, LUIE, G.O.]

Convict Establishment, Portland, Dorset, 15th June, 1878.

DEAR SIR,—Accidentally early in April last came I to know about the undue injustice that befell you after my incarceration, for which reason I petitioned the Right Hon. Secretary of State on the 2nd of May last, for permission to write yourself or some other member for TICHBORNE defence, to appoint attorney with order from Home Office to see me *ex Officio* on matters of importance bearing on that unpleasant subject. On the 6th inst. our much respected Governor had received an order to permit me to write when due. I was also requested by the Chairman to know when the facts took place. I replied October 1873; *i.e.*, a few days after the Judge accepted my word not to leave England; and refers to yourself and a few more exclusively.

Allow me now first to mention that, had I been at liberty, and consequently not on your own *terra-firma*, nothing should have prompted me to a *dénouement;* but, as it is, sympathy and simple humanity towards yourself and family induce me; since from what I was told by experience ultimately showed; you, so to say, spat in my face when I needed all support. Not so with hon. Mr. WHALLEY, whose high-soul virtue and lofty moral instinct were assailed with powerful discharges of derision and scorn, based on prejudice and falsehood; and may not this act of yours have a deal to do with your own misfortune? It certainly had, and has, with innocent TICHBORNE'S.

But I excuse Dr. KENEALY *ex animo*, since I knew your solid integrity and exhausted aid, and therefore *ex concesso* embraced the earliest opportunity to inform yourself (the victim) that after you had been acquainted of some facts, your vast erudition and superior wisdom enables you to obtain substantial restitution. Written and personal evidences will be at your service, philanthropy your aid, and though some difficulty may arise by reason of a certain person—but which can be compromised—yet your victory is sure. Being no *alumni*, I have endeavoured to write you as clear and brief as my self-taught rudiment permitted, for you to consider well, and if approved, Mr. HARCOURT or Mr. HARDING will suffice to see me. This epistle may take you and your friends by surprise, but not so the opposition, as they have been acquainted of facts upwards of three years from my repeated writings, *te judice cui bono?* I must not forget to remind you when I am suffering from illness and disease, without a friend except a straggling sympathiser of that class your own circles designate 'our outcasts.'—Your most obedient and wellwisher,

JEAN LUIE.

—KENEALY, Esq., LL.D., Stoke House, Tavistock-square, London.

DR. KENEALY'S REPLY TO JEAN LUIE.

JEAN LUIE,—I have received your letter; but you cannot expect me either to visit you myself, or to send anyone else to do so. You have deceived me once; and you cannot expect me to put faith in you a second time.

I have sent your letter to Mr. CROSS, the Home Secretary, together with some observations of my own upon it. That communication will probably appear in a printed form next week, and I shall cause it to be sent to the Governor of the Prison, so that he may show you, if he chooses, the grounds on which I have decided to have no personal communication with you.

You appear to be angry with me, because I did not stand up for you through thick and thin, as Mr. WHALLEY did. Why should I do so, if I believed you to be false? Mr. LEWIS, your own attorney, informed me before you were tried that you had confessed to him that much of what you had sworn was untrue. Notwithstanding the Chief Justice's solemn opinion, that Falsehood is sometimes excusable, or justifiable, he cannot get me to think with him; and I consider that you did TICHBORNE'S cause great injury, and that you deserved to be punished for the fraud to which you had lent yourself. You are besides, in my judgment, morally answerable for the death of another Chief Justice. I mean Sir WILLIAM BOVILL, who after he had read your evidence was convinced that it was true; was struck with remorse for what he had done at the first Trial, and kept perpetually saying, "It weighs on me. It weighs on me." And this he did almost till he died.

You have therefore two very serious things to answer for; and though you may perhaps think that there is no hereafter, and that when you die, you perish, be assured that this is a mistake, and that there can be nothing more true than this, as declared by the highest authority: "*For every idle word that men shall speak they shall give an account thereof in the Day of Judgment. For by thy words thou shalt be acquitted, and by thy words thou shalt be condemned*" (Matt. xii. 36). And this condemnation means the burning wrath of GOD.

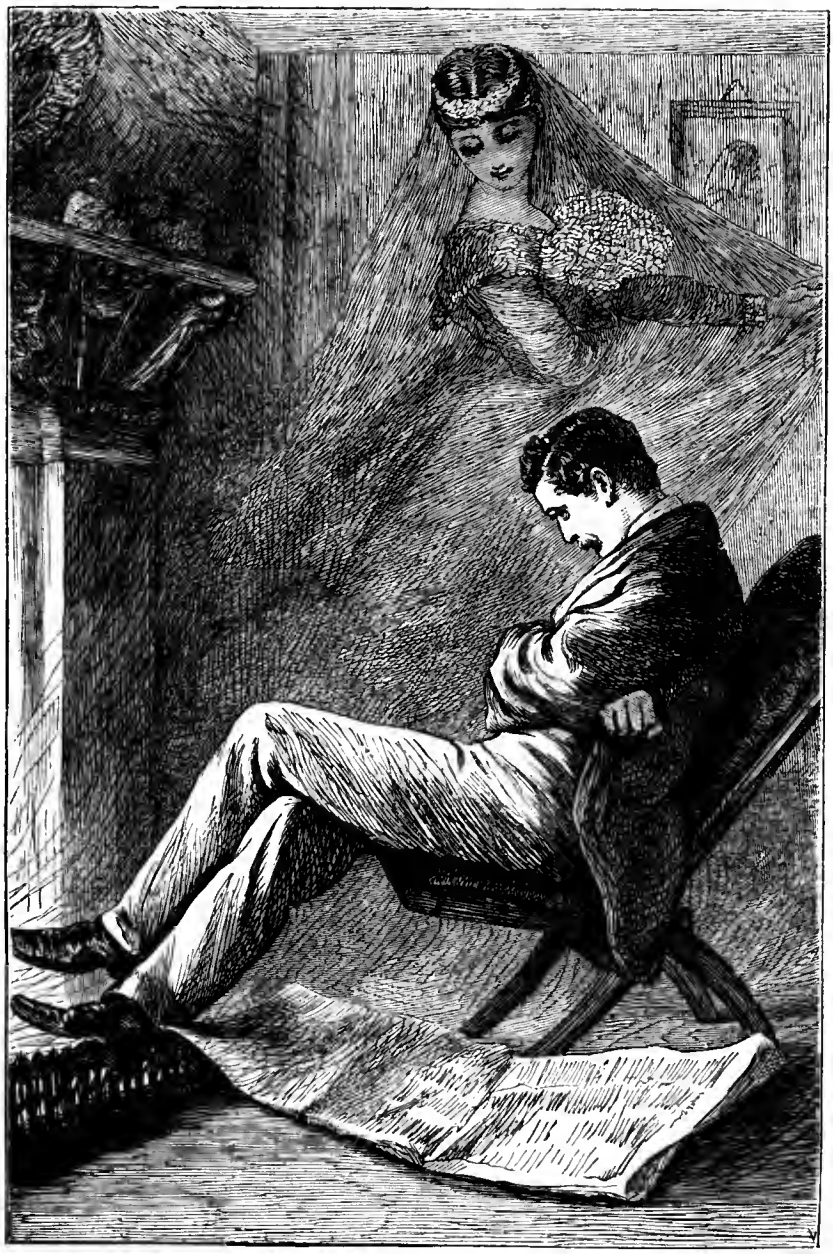
I am glad that in your Letter to me, you have used the words "innocent TICHBORNE." Many persons have thought that from

the first you and he were leagued together to deceive the Court; but I always believed that this was not so; and although your words do not add to my belief in the least, nevertheless they may do so to persons outside, who have conceived a powerful prejudice against that unhappy man, because of the evidence which you gave on his behalf.

Captain BROWN, who has been recently liberated from Jail, and whom I believe to be thoroughly truthful in all the evidence he gave for TICHBORNE, informs me that he remonstrated with you once in the cells, for the testimony which you volunteered to give, and asked you why you had done it? He said that you answered, "Because I was d——d well paid for it." If this be so, I should be glad to learn who it was that paid you? TICHBORNE told me that he had never given you anything, and I fully believe him. In fact, about the time when you turned up, his funds were exhausted; he had nothing to give, and I hardly know how he managed to exist.

I cannot surmise what your object is in writing to me, whether it is on TICHBORNE'S account or on my own. You intimate that if you were out of prison you would reveal nothing. This, I think, is some evidence that it is not a desire to make reparation for a wrong which made you write. If you are sorry for what you have done you should try to atone for it, as well while you are in Prison as if you were free, and you ought not to delay another hour in doing so.

TICHBORNE'S family are, and for some time have been, almost without bread. Those four innocent children, than whom none better, or more beautiful, or more perfect ladies and gentlemen in mind and heart, exist, have to some extent, through your means, been deprived of their just inheritance. Their mother is a widow, their father is a Convict; I myself, because of that conviction, am a ruined man. *You* are not wholly answerable for all these crimes; others share in the terrible guilt. But you assisted to bring them about, and you must never expect mercy from an



A BARRACK DREAM OF KATE.

offended GOD until you have done something that may, in some measure, wipe away these dreadful stains upon your soul.

You know how solemnly you assured me, after your character was first impugned by the Counsel for the Crown, that you were free from all reproach. You remember how the tears rolled down from your eyes when you begged me to stand up for you and defend your honour. You recollect the agitation which you showed when you spoke of your dead father, your brother, your children, and besought me to vindicate you and them from the unjust reproaches cast upon you. I heard and believed, and challenged enquiry; and it was not until then that Mr. HAWKINS threw off the mask which he had worn all through—for I have no doubt he knew all about you from the moment that MACKENZIE or some other Detective introduced you into the Case—and proceeded to prove your antecedents. With all this wonderful skill which you possess, what might you not have been, had honesty been your guiding star in life! But it is not too late to turn over a new leaf. Repent sincerely while you are in Prison, and when you are out, begin life afresh with a desire to do right. Make known to the world truly the persons who led you into this terrible transaction, and aid in getting Justice for the unhappy victim of these deep-laid plots. You say you have repeatedly written certain things. If these reveal any of the arts by which TICHBORNE was destroyed, and was ruined, they do not seem to be known to the Home Secretary. I can hardly think he would burden his conscience with the fearful sin of upholding a Case which was marked by so much guilt if you had brought anything of value to his notice that would expose the hideousness of the chief agents in it. At all events, if you really mean right you have plenty of means of doing it, even in Prison. Disclose all to Mr. CROSS without delay. He cannot be particularly proud of a Prosecution in which the PITTENDREIGH

Forgeries, and HOPWOOD, and MACALISTER, and MINA JURY played such prominent parts. If he is, I can only say that he stands alone in the world in that feeling.

You are not aware, I presume, that HOPWOOD, who was represented by Mr. HAWKINS to the Jury as being, and who himself swore that he was, freeholder of several hundred acres of land, was a mere pauper who had not a rood on earth; and is now a common carman at 15s. a week in his native town of Stockport, after having been sentenced to 12 months' imprisonment for bigamy; but of which six months were remitted, in consequence of the good service he rendered in the TICHBORNE Case, backed as it was by Mr. HOPWOOD, M.P. for Stockport, who, I hear, is one of his nephews. But they did not prosecute him for his false swearing; nor give him penal servitude as they gave you. I mention this in order that you may know how Justice is administered now.

You probably do not know, either, that MINA JURY was a common brothel-keeper in Hobart Town; that she was transported for robbery in Dublin in 1847, under the name of MERCIVINA CAULFIELD, and that since your trouble she committed several felonies, and is now again in penal servitude. But she was not sent there until she made herself so troublesome by her demands for money, and her threats to make disclosures, that it was deemed the safest course to tie her tongue by locking her up; and locked up she is said to be accordingly.

You say that you have written evidence of what you know. In this, I think, you must be wrong. The knaves who used you against TICHBORNE were far too cunning to put themselves in your power. But you might prove facts which even *they* could not disprove. What these are is best known to yourself. What has most puzzled me about you is, that you knew more about the real 'Osprey' than any other man; and where, or how, you acquired that knowledge—if you were in Jail in England at the time—I am totally at a loss to discover. Only yourself can tell.

Seriously do I hope that in this present movement—whatever it may mean—you desire to act with uprightness. If you like to write to me again, and are permitted to do so, you may. But until I am persuaded by facts that your object is good, I will neither see you myself nor be a party to anyone else visiting you. If you accept this letter in a sullen, or savage, or revengeful spirit, I shall be sorry. I pray GOD that you may not do so; and that if you are disposed to make known the Truth in the cause of Justice, you may no longer defer that blessed work.

E. V. KENEALY.

LETTER FROM THE GOVERNOR OF PORTLAND PRISON.

A Copy of the ENGLISHMAN containing Dr. KENEALY's letter to JEAN LUIE having been sent to the Governor for delivery, the following letter was received in reply:—

H.M. Convict Prison, Portland, Governor's Office, July 3, 1878.

SIR,—The copy of the ENGLISHMAN received at this Prison on the 11th instant, addressed to "JEAN LUIE," is herewith returned, as Convicts are not allowed to receive newspapers.—I am, Sir, your obedient servant, GEORGE CLIFTON.

DR. KENEALY TO MR. SECRETARY CROSS.

SIR,—Although you never favour me with even a common acknowledgment that you have received and read the letters which I send you, I must nevertheless continue to trouble you occasionally; leaving *you* to settle with yourself the question of discourtesy, which gives *me* no concern. I take good care that all letters which I write to you are forwarded, with a note from myself, for your perusal; and I should have thought you would prefer to have them in print, rather than wade through them in manuscript. I, however, have no time to make copies, and I am not prosperous enough to keep a private Secretary, a Mr. LIDDELL; so that I must still continue to send them to you in the present form of type, whether you notice them or not.

I can hardly suppose that you do not receive my letters. That would indicate a condition of things at the Home Office which I hope is impossible However, so long as you read them, I am indifferent about a reply; therefore do not trouble yourself on that score.

I think that there were certain things in my recent Letter to you on LUIE which might have attracted your eye and called forth a response. That, however, is your affair rather than mine. I have no reason to think that you feel disposed to render me any assistance in any matter connected with the TICHBORNE Trial, or in the grievous injustice which has been perpetrated on myself. It will be cause of wonder, and I think of loathing, for all time that I should have been so villainously treated as I am, and that no person of authority ever took up the Case so that it might be redressed. I myself have suffered so much that I am indifferent to what may further happen to me; and if I continue to call attention to it, it is not for my own sake so much as that of others who suffer under perhaps equal, though less known, wrong. The world may thus have proof on record for ever how falsely a love of "fair play" is attributed to Englishmen, when I myself am a living proof of the foulest play ever shown to any man—not even excepting poor TICHBORNE himself—whose wrongs, I think, will eventually call down the Vengeance of Heaven upon all connected with them. But nobody seems to heed this; and I suppose if it were mentioned in that refined assembly, the House of Commons, it would be received with those "cheers and ironical laughter" which greeted FAITHFUL when he entered Vanity Fair, and which, perhaps, were renewed when, as the Prince of Dreamers records, "first they scourged him, then they buffeted him, and then they lanced his flesh with knives; after that they stoned him with stones, then pricked him with their swords, and last of all they burned him to ashes at the stake. And thus came FAITHFUL to his end." These things are related in a book which is nearly as much handled, and, I fear, is almost as much neglected, as the Bible itself. It may not be deemed so profitable as a banker's book; but, I think, if you were now and then to read that portion of it where Giant Despair put Christian and Hopeful into "a very dark dungeon" and treated them as we sometimes treat our Convicts, it might induce you to relax in somewhat the severity of those Prison Rules which seem to have carried us back a century in our treatment of criminals, and are exciting the wonder and antagonism of all men who are not utterly regardless of the Sermon on the Mount.

The last words of poor FAITHFUL are not recorded by JOHN BUNYAN; but the last words of NELSON are commemorated in letters of light by his biographers. In his death-agony of pain, he exclaimed with joy, "THANK GOD I HAVE DONE MY DUTY." Many a time have I repeated those consolatory words, when I also have been in a death-agony of undeserved torture, for having done the same: and when I have seen Devils grinning, as the Angels wept.

Since I last wrote to you, I have received a letter (the second) from a person who professes to be well acquainted with Portland Prison. This man, whoever he is, knew that LUIE had written to me, when no other person outside my own household knew it. He declares *that* LUIE *has sent me several letters*, whereas I have never received but one. LUIE himself, in the letter of which I sent you a copy, declares that "for three years" he has been writing "facts;" and I humbly asked you to make enquiry into this; but I have not heard that you did. You can find out, if you please, all the mystery of LUIE. Do you not think that in common fairness you ought to do so? And do you not suppose that for your own reputation you should?

Are you indifferent to fame in History? Are you careless of that future renown, the hope of which makes amends to many for their share of suffering in life? Are you heedless whether your memory with future men shall be blackened? and that your children shall look back, not with pride, but with shame upon their progenitor as one either callous, or indifferent to Right and Wrong? How grand are the opportunities which you have for achieving glory, simply by being just! No men ever threw away such splendid cards as the present Ministry have had. No men ever neglected such a glorious opportunity of destroying their political opponents, by the plain and simple means of doing justice to the wronged and ruined.

How grandly you would shine before all your countrymen if you rose to the magnanimity of releasing TICHBORNE; not (if you choose) upon the basis that he was the true man—albeit, every one who has fairly studied the Case must feel that he is—but upon the ground, patent to all the world, that he had not a fair Trial. With what pride and delight your acting fairly to myself would be hailed by all the world of honest men and women, who know, as it were by instinct, that I have done no wrong, but have been subjected to an amount of persecution by Party and by the Press which will be as a foul blot for ever upon the escutcheon of this loudly-boasting century.

Would any man but yourself trifle with this noble chance? Would any man but you prefer the false and devilish smile of some of the greatest Villains that ever lived to the approbation of all that is good on earth, for having helped the innocent, and aided the fatherless; for having obeyed conscience in preference to fashion; for having unbarred the prison to a man who was sent there by the combined forces of Perjury, Forgery, and Injustice?

Why will you not accept my offer to bring you young ROGER TICHBORNE, so that you may see the miraculous likeness between him and the undoubted ROGER of 1854? Do you doubt my word that COCKBURN turned him out of Court lest the Jury should notice a resemblance, the most marvellous that ever the world saw?

You always profess to have well studied this Case, and to have convinced your own mind that the conviction of TICHBORNE is right. Have you come to the same conclusion as to my ruin? If you have, I pity your judgment; I might almost doubt your conscience. If you have not, why do you not aid me in getting justice? The world will believe that if you are indifferent to equity in my Case you may be equally indifferent in TICHBORNE'S. In fact, the wrongs done to each appear inseparable. The Judges who trampled upon justice at the Trial did the same in conspiring for my ruin. Nobody denies that I have been destroyed unrighteously. And all who think so, say, "*It was the same with* TICHBORNE."

I now transcribe for you the Letter which this man sends; it may be genuine, it may be part of a plot. I know not what it is. I have no faith whatever in the Letter which LUIE sent me, or in his desire to atone for his crimes. The writer of the following may, for aught I know, be an accomplice in some new device, fabricated for evil like the former one.

DEAR Dr. KENEALY,—I see you notice my communication* this week. I was rather surprised you did not do so last week, as I thought it would have reached you in time; but I was very much more surprised to find a letter purporting to come from LUIE. Now I am anxious to give you all the information in my power, and I can tell you that the Governor of this Prison has had repeated applications from LUIE for him to be allowed to write to you. He (the Governor) would not give the permission on his own responsibility, but referred LUIE'S applications to the Home Office, one after the other. No notice being taken of them, the necessary permission was not given, although on every occasion when according to the Prison rules LUIE was entitled to write a letter he sent a written application and the substance of his intended letter to the Governor, who (instead of giving permission as with any other Convict) forwarded LUIE'S communications to Mr. CROSS. This continued for a long time, Mr. CROSS never seeing the papers, they being disposed of by Mr. LIDDELL or someone below him. On the last occasion, however, LUIE'S application, in consequence, I believe, of Mr. LIDDELL being absent, found its way to Mr. CROSS, who immediately wrote to the Governor that LUIE might write to Dr. KENEALY if he liked, of course subject to the Prison rules. This permission was granted nearly three weeks before the date of LUIE'S letter. LUIE'S letter in consequence of this permission was written two days after the said permission was granted, and I have no hesitation in saying that the letter you publish was not in any word or *line written or dictated* by LUIE. LUIE knows no one word of Latin, and except Svensk and a smattering of German, he knows no language but English. I am sure he is unacquainted with the meaning of a Latin word, and the Latin quotations in the letter are simply foolery, as no one would accuse him of being in the slightest degree conversant with the dead languages. His *real* letter was of a very different kind, and contained information of an important nature. I am sure he has something on his mind, and he says he can tell you facts, which if used with your great ability will tend materially to liberate the Claimant. I am not one of those who run a muck in favour of the Claimant or yourself, but I think and feel that neither of you have had anything approaching justice meted out to you, and especially after what I have become acquainted with lately, I am convinced a Conspiracy is in existence to keep the Claimant and yourself as you are; and, from what LUIE says, I am sure he knows a great deal of the secret wire-pullings both before and after the Trial.

Subject, of course, to your judgment, I would earnestly beg you to see him. I don't think it would do any harm; have a Witness with you, and carefully question him. I have gone thus far into detail for your guidance, and to show you and your readers the real state of the case. I am sorry, indeed, I can't give you my name and position, but some day I will call on you and show you my position and means of information, both of which I think you will be a little surprised at. Suffice I am not a prisoner here, nor an official. Make what use you like of this and let me see it in the ENGLISHMAN, when I certainly *will* let you know more as it comes to my knowledge.—In haste, yours very truly,

AN INSIDER.

Portland, July 19th, 1878.

Now, Sir, there are strange statements contained in this communication which are well worthy of your attention. Is it true that the Governor of the Prison "has had repeated applications for LUIE to be allowed to write to me"? Is it true that the Home Office was made aware (very properly I think) of those applications, but that it took no notice of them? Is it true that Mr. LIDDELL, or somebody else, kept back these things from your knowledge? Is it true that by the accident of Mr. LIDDELL'S absence at his brother's funeral, the latest application found its way into your hands, when you gave the permission that had been denied for three long years? This, of course, exonerates you from much blame, and is an evidence of good faith; but what a grievous crime it imputes to your Under-Secretary, or some one below him? Can it be that the "someone" is the same "gentleman" who gave you the false information about MINA JURY, and thus made you the unwitting medium of an untruth to the House of Commons? Are *you* also surrounded by a network of plots and contrivances? And are you merely an unconscious instrument in the hands of others who belong probably to the "opposition," of whom the wretched LUIE speaks in his letter?

I, Sir, have never done you any harm; and can it be possible that you see in silence, and without enquiry, or sympathy, or help, a means at hand by which the devilish wrong to which I have been subjected may be redressed? I can hardly think this of you—yet what may I *not* think after the hideous crimes of the TICHBORNE Prosecution, and after the detestable means that have been used to effect my own ruin.

"Insider" is mistaken when he declares that LUIE did not write the letter. I feel sure he did; for it is apparently in the same handwriting as I received from him during the investigation into his character at that ever-accursed Trial at Bar. And yet it may be another Forgery; for in that Trial there were, as I have heard, at least a dozen first-rate Forgers employed to fabricate supposed genuine documents. Or the letter may have been dictated to him; and if this be so, I was right in suspecting at first that it was sent with no honest design. Note that "Insider" speaks confidently of another, a different, but a "real letter," which "contains information of an important character." May I ask you, Sir, to investigate this? Was such a letter ever posted? Or did some Detective intervene, and forward to some "gentleman" in your office an important letter intended for myself?

Are crime and treachery never to have an end in this fearful TICHBORNE Case?

The writer renews the request that I should visit this man with a Witness. I confess that I do not like to do so, and for the reasons which you must have seen in the communication that I have already forwarded to you. You, if you originated some enquiry without the inevitable Mr. LIDDELL, might possibly ascertain facts that would end in your own honour and in the discovery of that "Conspiracy to keep the Claimant and myself as we are." Is it too much to ask this? Perhaps it is after such past crime in this horrible Case. And yet I think you ought to do something.—I have the honour to be, Sir, your obedient servant,

E. V. KENEALY.

P.S.—Perhaps you might like to know that whenever I send anything in print to Sir STAFFORD NORTHCOTE, as I do to you, he always acknowledges it in his own hand. This proves one thing very clearly, that it reaches him and is not intercepted. It also proves another thing, which, I fancy, you can guess.

MR. CROSS'S REPLY TO THE ABOVE LETTER.

Mr. CROSS returned the following answer to the above letter. It is to be noted that he only acknowledges receipt; he does not even condescend to say that he has read it. He makes no mention of having instituted any inquiry into the grave charges which "Insider" makes against Mr. LIDDELL; he only notices them in this way, that he writes by Mr. LUSHINGTON. The letter was delivered by special messenger at Dr. KENEALY'S residence. On the whole Mr. CROSS'S conduct is not satisfactory.

Whitehall, 3rd August, 1878.

SIR,—I am directed by Mr. Secretary CROSS to acknowledge the receipt of your letter of the 30th ultimo, forwarding copy of the ENGLISHMAN of this date with reference to the Case of JEAN LUIE.—I am, Sir, your obedient servant,

GODFREY LUSHINGTON.

E. V. KENEALY, Esq., M.P.

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* The following is a copy of the first communication which Dr. KENEALY received from "Insider."

DEAR Dr. KENEALY,—I wish you would let me know through this week's ENGLISHMAN when you last saw LUIE. Have you had a letter from him lately? I am afraid you have not. I know positively that he has written several to you, which have not been delivered. He wants to see you very particular, and keeps saying he has important information to give you. I can't give you my name for various reasons, but can vouch for all I say. I can tell you the times he wrote since he has been here if you answer in ENGLISHMAN, and the information is of any use to you. With my best wishes for your health and happiness,—Yours truly,

AN INSIDER.

Portland, July 6, 1878.

DR. KENEALY'S SUMMING-UP FOR THE DEFENCE.

(CONTINUED FROM PAGE 99.)

ONE HUNDRED AND THIRTY-NINTH DAY.—THURSDAY, DECEMBER 11TH, 1873.

Dr. KENEALY then rose to resume his Speech on behalf of the Defendant. He said—May it please your lordship: Gentlemen of the Jury. When I last addressed you, I had called attention to the extraordinary fact, of the boundless reliance which the Prosecution placed upon the evidence of Miss HALES—a reliance which they carried so far, as to make the statement of the Defendant as to her one of the assignments of perjury against my Client: and I pointed out to what extraordinary lengths they were prepared to go, and the animus they exhibited, when they persuaded a lady like Miss HALES to go into the Witness-box and to swear to circumstances which you can hardly now have a doubt were untrue. I was also calling attention to the extraordinary animus they have exhibited towards the memory of the dead Lady TICHBORNE by attempting to present her to you as a person of crazed intellect; an attempt in which, however, they have signally failed. I also represented to you that there was nothing to be wondered at in the abstention of the Defendant from visiting his family on his return to England; because he found that

the same animus seemed to exist against him then in the minds of the members of it as we all know exists now. I stated that when he was at New York he became aware, for the first time, that they had apparently, without making any inquiry as far as we know whether ROGER TICHBORNE was alive or not, jumped to the conclusion that he was an impostor, and that they had actually published in some New York paper a paragraph to that effect. In the multiplicity of details and facts which characterise this Trial that had entirely escaped the recollection of the three learned Judges who preside here, and perhaps of the Jury also. I was certain I had read that statement, but I could not at the moment refer to the exact passage or the precise page. I am able now to redeem my pledge to the Court and refer to it. It is in the cross-examination of the Defendant. He is describing his journey homewards, and he states that when in New York he stayed at the Clarendon Hotel, and going the first morning into the coffee-room he took up a paper and saw a paragraph headed, "Extraordinary Circumstance—an English Baronet a Butcher in Australia;" and he adds, "a more scandalous article I never read." He is then asked, "Did you till then know that you were denounced as an impostor?" and he replies, "No; Mr. CLIFFORD told me I should probably have to encounter some legal difficulties before I obtained possession of my property, but I did not expect that."

Mr. Justice LUSH: I did not read the paragraph in that sense, but simply as stating an extraordinary fact, that a baronet should be a butcher, which is what you contend for.

The LORD CHIEF JUSTICE: I thought you said it was in some English paper—and there was something said about articles by Mr. HIGGINS, signed "JACOB OMNIUM." *

Dr. KENEALY: It is clear from the passage I have read that it was taken in the sense I have indicated, and that he found himself denounced as an impostor. I don't see why a New Yorker, to whom the matter was indifferent, should have so denounced the Defendant; and therefore I think this article must have been forwarded from England to prejudice the Claimant's Cause. If the Defendant be Sir ROGER TICHBORNE, he would be justified in assuming a high tone and saying, "Long before you saw me, you questioned my identity! you took the trouble either of writing articles in England denouncing me as an impostor, or you got some one in America to do so; you have thought fit to assume a tone of hostility to me, and I will stand upon my dignity." That one is the course, I submit, which the right man would have pursued. A false man would have followed a very different one. If he was an impostor, and had convinced his supposed mother at the first interview, he might hope by a course of conciliation to reconcile others to him. The Defendant, however, being no impostor, stood upon his dignity, and was resolutely determined to abstain from making overtures to persons who had published to the world their opinion that he was not the man whom he professed to be. I use that argument incidentally, not meaning to travel away from my well-founded complaints of the mode in which the Prosecution have treated the memory of Lady TICHBORNE, and which is about as bad conduct as can well be imagined. It was as though, after her death, they had formed themselves into a kind of league to defame and debase her memory. It shows an extraordinary amount of feeling, and an extraordinary desire on their part to prejudice people against the Defendant that such, I will not say false, but untrue and probably malignant statements should have been sent abroad concerning this lady. After all the consideration I have given to this Case, I am still under the delusion—if it be a delusion—that Mr. CUBITT sought to convey the impression he did, that this lady did ask him to go and live some short distance from her in the Pyrenees, and if I had not resented the imputation it might have been urged that this old lady was so lost to all sense of decency that she actually made a proposition of that sort to this young man.

The FOREMAN: It is not very complimentary to us to express that idea after we have given our opinion upon it.†

Dr. KENEALY: I do not mean to be uncomplimentary, Gentlemen, I assure you.

Another JURYMAN: Remembers he was nearly 70 years of age.

Dr. KENEALY: That substantiates the view that I have put before you. I simply do my duty in asking you to look at the matter again. I don't mean in the least degree to reflect upon your judgment. All that we know of this lady confirms us in the belief that, so far from being a person likely to make a foul proposition of this kind, she was a most true and honourable lady. You have had a great many of her letters before you, but I don't find in one of them even a glimpse of anything of this kind, and I am quite sure if it were in the power of the adversaries of the Defendant to present to you any writing which would convey that impression they would have done so. You will remember that among the other false prejudices sought to be conveyed by various members of the family an endeavour was made to show you that no ill-feeling existed in the minds of the family against her, and that Mr. ALFRED SEYMOUR denied that there was anything at all like an unfavourable sentiment existing among her connections towards her. You will remember also, that under that representation I called for a letter which seemed to me to convey an impression of an entirely different kind, and I was told that I could not have that letter then, and the matter remained as it stood. It may have escaped your attention as what Mr. ALFRED SEYMOUR'S testimony was with reference to that; but I don't at all wonder that some of you have forgotten a great deal of the evidence. I think one of you was under the impression that Mr. ALFRED SEYMOUR had denied the conversation which was said to have taken place in the House of Commons, whereas the only length to which he would go was to say that he did not remember it. I don't use that in an uncomplimentary sense, because amongst the enormous mass of evidence it is not surprising that you should not recollect everything. The passage to which I beg to call your attention is in Mr. ALFRED SEYMOUR'S evidence, given so long ago as the 9th of June last. I asked him "Was your sister on terms of great friendliness with her family?" and he replied:—

"She was on terms of great intimacy with her family.

"Was any communication made to her at the time her father was dying?—I made none.

"Was there not great alarm felt by the family at Knoyle lest she should go to see her father before he died?—I don't remember."

I should have thought that the memory of this gentleman would have been stronger on a matter of that kind. He was then asked:

"Were their fears expressed lest she should go over to Bath when she heard of her father's illness?—I don't remember. Are you prepared to say it did not take place?—I have no knowledge of it. Can you give any reason why she did not come to see him in his last illness?—I can give no reason. Did nothing pass between you and Mr. JAMES TICHBORNE about his taking her to Knoyle to see her father?—I don't remember. Do you deny it?—I do not deny it. I made no observation whatever about it."*

Well, now, Gentlemen, it was soon after that I called for the letter which was written by Mr. JAMES TICHBORNE to his wife shortly before her father's death. The Treasury did not print that letter, and I had to obtain possession of it through the compulsory powers of the law. That letter leaves no doubt upon the mind of any person that there was an unfriendliness on the part of the family towards this unhappy lady. We know that there was an equal antipathy towards her on the part of the TICHBORNE Family. We know that Lady TICHBORNE and Mrs. NANGLE hardly ever met without its resulting in some disturbance with her husband on the matter. And, Gentlemen, it is material to bear in mind that this feeling on the part of both branches of the family has survived the death of Lady TICHBORNE, and is now manifested towards her son;—this Defendant. The letter I have alluded to is dated November 17. It says:

"On my arrival at Alresford yesterday, I found a letter from ALFRED SEYMOUR, mentioning that his father had once more, to the astonishment of them all, rallied, and was much better. I don't know how long this amelioration in his condition may last. GOD only knows. The offer I made them to go to Bath was declined [I suppose by ALFRED SEYMOUR]; and they seemed in great fear of your going over to Bath when you heard how very ill your father was, but I wrote to assure them that they need be under no apprehension of the kind."

Well, this is a very strong illustration of the antipathy of the persons at Knoyle to this unhappy lady, for unhappy she may be called, not only with reference to the beginning and middle, but also the end of her life. But she seems to have shown no resentment, for shortly afterwards we find her writing a most kind, forgiving, and beautiful letter to HENRY SEYMOUR, which shows what a charming nature this lady had, and how very wrong her relatives were not to appreciate a relative with such qualities. The letter is dated December 6, 1849, and contains the following:

"MY DEAREST HENRY,—I waited until the very last mournful ceremony was over to acknowledge the receipt of your kind letter. But, dear HENRY, tears can only express the feelings of my heart. How I regret not to have seen him during the last few days he lived in this world. The loss of my dearest father I shall feel as long as I live, accustomed as I have been to let him know all the actions of my life, and everything I did. But I think it may add to your affliction in describing my afflicted feelings, and that kept me from answering your kind letter. However, as you have promised to write me soon again, I hope you will do so. I have been thinking over that mournful and lamentable ceremony when we are separated for ever from those we love."

A lady who was capable of writing in that deeply tender, pathetic and ennobling way, and who was evidently most passionately attached to her father, ought not to have been excluded from his dying bed. It shows as bad a feeling as can well be conceived on the part of the members of that family to have

* This appears in the Defendant's cross-examination, page 1818. Observe how each Judge gave an artful gloss to what he had previously said. If it were merely news, how could it be called "scandalous"? HIGGINS is referred to in the Defendant's cross examination, pp. 1632, 1633.

† The Jury had now got so insolent since they saw the bias of the Bench, that they did not scruple to interrupt as above. There is little doubt that the Family having poisoned her in life, sought to blacken her reputation when she was dead.

* See Trial, Vol. II. page 15; where the *real* evidence is set out. The above is only the newspaper reporter's summary of it. The Letter of Nov. 17 appears Vol. V. page 230: that of December 6, in Vol. II. page 23.

excluded her from that melancholy consolation of bidding him farewell. That old Mr. SEYMOUR was not consulted may be taken for granted, as he would hardly at such a time have refused to take his daughter to his bosom. It is evident that she was a person who cherished no animosity. I hope your minds will go with me in lamenting the existence of that feeling against her; and it is my duty to point out that that feeling exists still on the part of others, and is exhibited towards the person she regarded with the greatest love and tenderness up to her last moment. I observe a letter of the Defendant to Lady TICHBORNE numbered 153, and I take it for granted that they have that number of letters in their possession, although they have only printed 43. Why they have not printed the other letters I cannot say—doubtless for reasons appreciated by themselves.

Mr. HAWKINS: I am not aware of any letter in existence, written by the Defendant, which has not been put in.

Mr. CHAPMAN BARBER: The Defendant had access to any document deposited in the Court of Chancery that he desired to see.

Dr. KENEALY: Yes, access if he was able to put his hands into a well-filled pocket.

Mr. HAWKINS: I am told by a gentleman from the Court of Chancery that a solicitor can see anything deposited there without paying.

Dr. KENEALY: What is the use of seeing without being able to get copies, and we know that that is an expensive affair. It is a fair inference that there are other letters, for the letter dated March 7 is No. 152, and the next dated March 8 is numbered 153. There are two letters which show in the most natural way possible the love of the Defendant for his brother and the love of Lady TICHBORNE for her second son ALFRED—that son whom she loved as passionately as she had loved ROGER; and it is not likely that she would have disinherited his offspring for the sake of a person about whom she was not quite certain. If there had been any coldness observable in her conduct towards ALFRED, they would not have failed to have pointed it out, and Mr. HAWKINS might have said, indeed he would have been happy to have said, as I fancy, that she was a lady of strong passions, who did not care for her second son; and therefore rashly or wickedly repudiated the child of that son for a man whom she must or might have known to be an impostor. But we know she did most dearly love him; and how she manifested that love was by preserving every relic of his which she could find; and you will remember that this Defendant also loved his brother with equal fondness; for when Mr. GIBBES told him of ALFRED'S death he shed tears. I do not want to enter into the history of ALFRED TICHBORNE: but you may gather from the transaction of the watch, that this Defendant entertained a strong feeling of affection towards the memory of ALFRED; and that the same love was reciprocated in the heart of the mother. And why should not the elder brother manifest that feeling, when he read the letter announcing the younger brother's death?

Mr. HAWKINS, and others, attempted in the usual way to make game of this, by saying that the tears were false, that he went behind the tree for another purpose, that he had just washed his face, or something or other appertaining to burlesque. Assume that he is the real man, and the tears are what you might expect; assume that he is an impostor, as Mr. HAWKINS wants you to do, and then of course the tears are false. It is in this way that all the events of this gentleman's life are set before you, from a jester's point of view; as if, because he is stout, there could be nothing tender, or real, or pathetic, or true, in anything that he does. I ask you in fairness, therefore, to draw the conclusion—not flattering to them—that they offer you at all times only a one-sided view of his character, and nothing can be more unfair than to print only those letters which represent him in one, and that an unfavourable, aspect, while they conceal others—like this of the watch *—that could not fail to present him in a favourable light. Allow me again to direct your attention to that letter which they suppress—ask yourselves, then, are there not many more which they keep back in the same way? and with the same object? Nor do they give the mother's answer to these letters. The letter is dated June 8, 1867, and I call your attention to its pathetic nature. It is from the Defendant to Lady TICHBORNE, and in it he says:

"MARY is delighted with the canary, and much more so that you think of her. I remained at home all day to see if you came. Of course I shall not go out on Monday till you come. I heard the other day where the watch of my dear brother ALFRED was, so I sent to the man who knew where it was, and told him if it was my dear brother ALFRED'S watch I would give him a pound to get it for me. He sent it this morning. It is a beautiful small gold watch, with his monogram let in with enamel at the back. It is made by HARRY EMANUEL. I think there is no doubt it is my dear brother ALFRED'S watch. I did not expect the person to send it up as I have no money to send him what he gave for it. But I will borrow the money to-night of Mr. HOLMES when he comes. It is only £25, and £1 for himself. Of course the watch is for you if you come down, and should wish to have it. I hope you are better. We are all well here, and they all join me in kind love to you, my dear mama. Your dear little AGNES is learning to say, 'GOD bless mama—GOD bless papa' (laughter). Hoping soon to see you, my dear mama, I am, your affectionate son,

"ROGER CHARLES TICHBORNE."

Now, Gentlemen, I invite your attention to the simple and pathetic language of that letter. That language seems to excite ridicule among some persons, but I must say I do not envy them their feelings. We have had some of her letters printed and dilated upon: those that might reveal much they have suppressed or kept back, trusting to the chance of our not remembering or knowing them. So it was with this. They kept back her reply until it was almost dragged from them. It is dated June 9th, 1867.

"MY DEAREST ROGER,—I thank you many times for your kind letter. I am sorry I kept you at home to-day, but I mean to go to-morrow for certain. You don't give me any details of your meeting in London, and I feel very anxious about it, and do not see much good arising from it. It seems that legal steps have not been taken, but I am sorry for it, as it will encourage your enemies. I am much obliged to you for having secured ALFRED'S watch. I am so desirous of getting as much as I can of what belonged to my poor dear beloved son ALFRED, and I value the watch exceedingly, on account of it having belonged to your poor dear brother, and I feel a kind of consolation in having by me those things which belonged to him in this world. I send you a cheque for £28 to pay for the watch, and you will put the £2 more in your pocket, for I can't bear the idea of your being without a penny. To-morrow I will make a cheque when I come to Croydon. I am always thinking of you and your affairs, and trust those who have them in hand are going the right way.—With my kind love both to your wife and yourself, believe me to be your affectionate mother,

"h. f. TICHBORNE."

You will notice that the initial letters are small and not capitals. These letters have not been set out in any of the printed documents, but they seem to me to be important as establishing a natural feeling on the part of the Defendant towards ALFRED'S memory, and the strong feeling existing in the mind of the mother towards her son. One of the small, miserable, and contemptible points which the Prosecution made in this great Case was that the Defendant showed his ignorance of the ways of society by addressing his letters to "Lady JAMES TICHBORNE." That, Mr. HAWKINS said, was a title which ROGER TICHBORNE never would have used, because he would have known that he could only have done so had she been the wife of a Lord JAMES TICHBORNE. Now, I noticed the other day that the first letters addressed to her by the Claimant, when he was out of the country, were addressed "Lady JAMES" to distinguish her from "Lady ALFRED," but when she was in Paris he usually addressed her as "Lady TICHBORNE" or "The Dowager Lady TICHBORNE." You see, therefore, that while she is in England she is addressed as "Lady JAMES TICHBORNE," to distinguish her from Lady ALFRED, but when she goes to Paris, where there is no danger of such a mistake being made, she is addressed in the proper way.

In pointing out to my lord this day the particular passage with respect to New York, I ought also to have referred to two other passages, which had been said to harmonise with it to some extent; namely, those which gave the reasons that operated on his mind, in addition to those about the "impostor;" reasons that induced him not to pay that attention to his family which the Prosecution say that he ought to have paid; and the want of which, they allege, is a proof of his *mala fides*. In cross-examination, the Solicitor-General asked him "Why should you not have gone to your two uncles, ALFRED and HENRY SEYMOUR?—How was I to know that they were not the very persons"——. Now, Gentlemen, whether he was going on to say, "that got the paragraphs inserted in the New York papers," or to give some other valid reason for his not taking such action, I do not know; because he was immediately stopped by the Solicitor-General, who took him short by saying: "Why did you not go and say, 'Here I am—I am ROGER TICHBORNE. Put me through any catechism you like'?—You could suggest one hundred different ways, and say why I did not do that; I did what my mother wished me to do."* It has often been asked, "How is it possible to believe that his mother told him not to visit any member of the family before he came to see her?" I think the answer is perfectly easy, and quite intelligible. You have it in evidence that his mother was so passionately attached to him that his father had to adopt a kind of stratagem to get him to Stonyhurst from France. And it seems clear that she loved him so fondly that she never would willingly have allowed him to come to England. She seemed then to want him always in her sight: and the same feeling existed to the end. When ROGER was taken to England she saw but very little of him. He paid her one or two visits, and she paid one unhappy visit from France; I refer to the occasion when she was, as I say, hurled out of Tichborne House.† She may be said, therefore, to have been for years entirely separated from the son she so dearly loved. And I can understand her reasoning thus: They sepa-

* This letter appears Vol. IV., *Trial*, pp. 291-2. The Mother's answer will be found Vol. V., page 317.

* See for references to this subject, the Defendant's cross-examination in the C. P., pp. 1608, 1626, 1627, 1633.

† See Mr. J. R. F. G. TALBOT'S evidence on the subject, *Trial*, Vol. II, pages 166 and 172.

rated us and tore us asunder for years. Notwithstanding all my yearnings for his society, the occasions were few and far between when I had the opportunity of beholding him. Therefore, now when I get him again I will endeavour to keep him entirely to myself, and separate him from those who would keep him away from me. I can understand that, and if you can understand it, then you can understand her asking him to come and see her first, and let her twine herself around his feelings, and never again be parted from him. Once having seen him in Paris, she scarcely ever lost sight of him. She gave up everything; she left all for him: her home, her native land, her friends, her priests, her charities; all her fond associations: she came to England to be close to him. All this is consistent with her request that he should go first to her: nor does it appear unreasonable that she should have communicated to him all the reasons which led her to make the request; and which may have tended to prevent him again attaching himself, either to the TICHBORNE or SEYMOUR clique. Clearly Lady TICHBORNE urged him to have no communication with the SEYMOURS. They had opposed him in New York; they opposed him on his arrival here; and if these are not sufficient reasons why he did not go to them I am unable to furnish any.

There are other letters than these which I have mentioned, from which it appears that Lady TICHBORNE thought it essential that he should see no one until he had seen her. It is necessary that I should direct your attention to passages in them; I mean those few that they have printed; for of the rest I know nothing. You may not at the moment see the bearing of them; but I shall not read one extract of which I shall not make good use hereafter. On the 11th of May, 1867, he writes:—

"I saw HOLMES to-day, and he is ready to file the bills in Chancery, but wants £500 before he can file them."

Then on May 27th he alludes to Mr. TUCKER, who was referred to in Mr. HAWKINS'S Opening Speech. He says:—

"TUCKER will get the money, but he wants 50 per cent. I could get it elsewhere, but I should have to give more. So we had better tell him at once we will give him the 50 per cent."

Here you see a demand is made on him by HOLMES for £500; but he has no money; and he is about to negotiate with TUCKER for the amount required. If he were the vile impostor he has been described he would do all he could to ingratiate himself with TUCKER, but we find him in the next letter speaking as the real ROGER TICHBORNE would have done. Writing to Lady TICHBORNE he tells her that TUCKER was anxious to become sponsor to his son, but he would not have him because he was a Protestant; and more than that he had discovered that TUCKER was not so respectable a man as he thought; and that I consider to be a strong proof of the Defendant's bona fides.

There is another letter of the 2nd of June; and one of the 8th, but *that* the Prosecution declined to print, for some reason.

Mr. HAWKINS: All the letters printed are those used in the former Trial, and those only; and all the rest came from the Defendant himself, and were deposited by him in the Court of Chancery.

Dr. KENEALY: Mr. HAWKINS said in his Opening Speech that everything that could throw light on the Case should be laid before the Jury.

Mr. HAWKINS: I am informed by Mr. CHAPMAN BARBER that any Attorney or Attorney's Clerk can take copies without expense.

Dr. KENEALY: I am glad to hear it. I wish we had known it before. But we appear to have learned nothing.* At all events they print the letters of the 2nd and 12th of June, skipping over that to which I have called your attention relating to ALFRED'S watch, which I say is a simple and beautiful expression of natural affection. One of the great points of the Prosecution is that he refused to see his brother officers when they called upon him, but in his letter of the 2nd of June he tells his mother that a Captain STRICKLAND had called, but that he had been warned against him, and therefore would not see him. It might have been that after Captain NANGLE'S visit, which, in vulgar phrase, was nothing but a "plant," the Defendant probably thought the visits of those "brother officers" were similarly designed, and he might have been warned against them. There is another letter of his to which I would call attention. It is dated July 2, 1867, and addressed to Lady TICHBORNE, and it described visits from Major HEYWOOD, Mr. SUMNER, and other gentlemen who recognised him at once. There are a number of statements made of gentlemen having called on the Defendant, and recognised him, and there is is no contradiction given to them. This is an important fact. Take it for what it is worth, which I think is a great deal. We know that whenever the Prosecutors have a chance of negativing anything contained in these letters, they do so. Why not in this? I may be asked why I did not put these in the box? Gentlemen, in this world when a man is down he is down. Many friends have deserted him in his adversity, but the proceedings of this Trial show that there are others who have not left his side. After the way in which the names of Lord RIVERS, Mr. GUILDFORD ONSLOW, and other friends of the Defendant are spoken of, the contumelious manner shown towards them, and the insinuations cast against them, it requires a strong mind for a man who has no personal interest involved to come forward as an earnest supporter. There are some persons who have given to them what is called "the key of the street." We have not had the advantage of seeing Mr. BOWKER in the box, and of knowing how it was that he should write letters to various people stating that the Claimant was an impostor, but we know the character of his denunciations. And we have no doubt that they have influenced numbers, and driven them from the Witness-box. In a letter of September 5, 1867, the Defendant says:—

"HAMMOND called and said he must take poundage on the bill. I must give a bill of £1,000 for £150. I suppose it is very enormous, but I cannot help it. It will play the deuce with me when I am in possession."

I call your special attention to his reference to coming into possession. Was that the observation of an impostor?

I must now direct your attention to the 'Osprey,' and to the evidence given by LUIE; but only by way of anticipation. In a letter to Lady TICHBORNE, the Defendant says, "They are going to try the 'Bella' 'plant.'" Mr. HOLMES had received a letter from men who said they had been on board the 'Bella.' "They forget, my dear mama, that part of the ship was picked up as well as a boat. All I can say is that I hope God will punish those wicked people who have persuaded these poor sailors to perjure themselves for the sake of a few pounds." Gentlemen, bear that in mind, because you will be asked by Mr. HAWKINS by-and-bye, how was it that LUIE was brought forward to perjure himself for money? You will find as early as September, 1867, some persons, whom the writer of this letter declares to be adversely inclined to him, are set upon him to give an account of the wreck of the 'Bella,' and that the Defendant entirely repudiated their assistance. Defendant says that he mentioned this because the person who wrote the letter was above the ordinary class in life, but one who ought to know better. On the 23rd September he writes a letter, of which I will read you a paragraph. At that time he is at Alresford, near Mr. HOPKINS, and frequently with him, and yet in that letter he calls him Mr. HOPING. I use this to show the carelessness of the man, and Mr. HAWKINS will use it for the purpose of showing that he did not know these people. You cannot accept such an explanation, because the Defendant was then in almost daily communication with Mr. HOPKINS; and ROGER was in the constant habit of making such absurd mistakes. Now, Gentlemen, there is a passage in a letter of September 27th, to which I respectfully invite your attention. He says:—

"I think, my dear mama, I know an office which will advance me £5,000. It will be through HOPKINS, the same office he rose the £37,000 from."

From this you see that this Defendant, having come to London at Christmas, 1866, finds himself on the 27th of September of the next year minus £37,000. You will see what an important bearing that has by-and-bye; but I ask you not to forget the dates. He writes later on in October, 1867, with the old secretiveness of ROGER TICHBORNE:

"My dear Mama,—I think I have an idea where I can get the money advanced me. I will tell you all particulars when you come. I don't want to let HOLMES know anything about it."

In connection with that £37,000, in connection with Mr. HOLMES, and in connection with the argument of Mr. HAWKINS with regard to Mr. HOLMES, I read this paragraph. And I also ask you to bear it in mind, when I come to Mr. HOLMES, as it may give you one reason why I have not put him in the box. In a letter dated February, 1868, he said:—

"I have not seen HOLMES since I left HINGSTON. I showed him Mr. HOLMES'S bill, and was much surprised at his charge, and said if he had known HOLMES would have charged me when he asked any questions, he would not have asked them. He said he thought that HOLMES made the bill in order to show the other side that he acted with no partiality towards me."

That is a phrase which I do not understand. It brings HOLMES into a species of connection with the other side. Why on earth he should desire to do that I do not know. Mr. HOLMES having squeezed the orange as dry as possible, thought he could not make any further use of it.

The LORD CHIEF JUSTICE: I do not quite understand. Do you mean that Mr. HOLMES had taken a part of this £37,000?

Dr. KENEALY: I did not say that it had gone into his pockets. I do not know into whose pockets it had found its way.

The LORD CHIEF JUSTICE: I thought I caught you to say Mr. HOLMES had squeezed the orange dry?

Dr. KENEALY: That is what I said, my lord.

Mr. Justice LUSH: Is there any proof that it got into Mr. HOLMES'S hands if Mr. HOPKINS raised it?

Mr. HAWKINS: There is no proof that it was raised at all.

Dr. KENEALY: No proof! There is the distinct assertion in that letter.

Mr. Justice LUSH: That is all.

Dr. KENEALY: It mentions Mr. HOPKINS as the person who raised it. He would scarcely have said that to Lady TICHBORNE if it were not true.

* This assertion of Mr. HAWKINS seems a very doubtful one. It is hardly in accordance with the usual practise of the Court of Chancery.

The LORD CHIEF JUSTICE: Assuming that it was raised, does it appear that any part got into the hands of Mr. HOLMES? If he had received any part of it he would have had to give credit for it in his bill of costs.

Dr. KENEALY: The bill of costs is not before the Court.

The LORD CHIEF JUSTICE: Your argument is that HOLMES's bill of costs for £5,000 is in addition to sums which he has already received.

Dr. KENEALY: This letter is dated the 27th of September, 1867, and the first paragraph about HOLMES's bill does not appear at all until February, 1868.

The LORD CHIEF JUSTICE: Is there not a letter in which the Defendant says he hopes HOLMES will not get a shilling of his bill paid?

Dr. KENEALY: There is something of that kind.

Mr. Justice LUSH: There is a lettter in which he charges HOLMES with treachery, and expresses a hope that through his bankruptcy HOLMES will not get a shilling.

Dr. KENEALY: Yes; speaking with reference to that particular bill. The only statement I can find in writing is with reference to the £500, "which must be paid before the bills can be filed," and which I accordingly suppose was paid. Well, then, we have the £37,000 which was raised by Mr. HOPKINS all gone after the man had been nine or ten months in England, and we find him in such a position that he is obliged to make efforts to raise another £5,000.

Mr. HAWKINS: On March 18th, 1867, Defendant wrote:

"I am thinking of declaring myself bankrupt next week. I cannot get HINGSTON and them to sign the deed. They are all going with HOLMES, who is trying to do me all the injury he can, yet the wretch says I still owe him £5,700."

Dr. KENEALY: "I still owe him."

Mr. HAWKINS: There is no evidence of raising the £37,000 by Mr. HOPKINS except under the powers conferred by old deeds to pay off the liabilities on the estates.

The LORD CHIEF JUSTICE: £37,000 cannot have been dissipated in nine or ten months.

Dr. KENEALY: I take this letter to be strong evidence of the raising of £37,000.

The LORD CHIEF JUSTICE: Nobody would have advanced that in the uncertain condition of the Defendant's affairs. No office would do so under the obligations they owe to their shareholders.

Dr. KENEALY: I don't know what security was given. All I am insisting on is that there is plenty of evidence in that letter that he spent £37,000 in from nine to ten months.

The LORD CHIEF JUSTICE: That assumes that he got it. I don't believe that, and for this simple reason, that no office would lend the money under the circumstances.

Dr. KENEALY: I don't see that any other construction can be got out of these words. I use the argument in two ways—first, to show the unbounded faith and trust which Mr. HOPKINS had in the Defendant, and under the influence of which he raised him £37,000; and, secondly, to show what kind of hands the Defendant was in when in between nine and ten months it was all gone. And from that letter Mr. HOPKINS appears to be engaged in the endeavour to raise another £5,000 for him. It does very frequently happen that persons in the position of the Defendant are able to raise money—large sums of money sometimes—on what you and I would think very slight security.

The LORD CHIEF JUSTICE: But the offices do not do that.

Mr. HAWKINS: The schedule in bankruptcy is in, and there is no mention there of such a debt.

Dr. KENEALY: I am afraid schedules of bankruptcy do not always contain all that they ought to do. (A laugh.)

Mr. Justice LUSH: Nor does the bankruptcy schedule make HOLMES a creditor.

Dr. KENEALY: I do not pretend to say he got any of it himself; but it seems——

The LORD CHIEF JUSTICE: I don't think the schedule is in.

Mr. HAWKINS: Yes; it was set out in the evidence.

Dr. KENEALY: Mr. HOLMES could have given us a great deal of valuable information upon that point; but he is not called, and I complain of that. It is obvious which side he was.

The LORD CHIEF JUSTICE: Dr. KENEALY, this is a matter seriously affecting a professional reputation, and, indeed, more than that—a private and personal reputation. If £37,000 was raised at any office, of course the Defendant must know at what office it was raised. If you can prove the fact we will give you an opportunity of doing so before the Trial is over.

[The Defendant here turned to his Counsel, and made a verbal communication.]

Dr. KENEALY, without further allusion to the point at issue, proceeded: Gentlemen, I now call your attention to a paragraph in a letter written on the 23rd of May, 1867, to Mr. ROUS, whose absence from the box and whose conduct in the Case I shall have to make some observations upon hereafter:

"MY DEAR FRIEND,—We have received a valuable letter from Australia, giving an account of my arrival at Melbourne in 1854. It was sent by my banker, Mr. COTTIE, from Wagga-Wagga. He thought I might want it."

What has become of this letter? The Defendant, who pays no heed to his Case, or what becomes of it, cannot tell. He can tell—for he cares—nothing. Then there is a letter, dated December 9, to ROUS, which contains a remarkable instance of the Defendant's secretiveness, and speaks of one of those illnesses (which you know have always been represented by the Prosecution as simulated) in a way which shows they were realities:

"DEAR FRIEND,—I am glad to be able to contradict that Winchester tale, for I have been very well. On Thursday I was taken with a bad attack of spasms, but it was at a place where nobody saw me. They generally last about half-an-hour, and I am then quite well, except a slight sense of weakness. I start for Ireland in a day or two. Do not mention to any one, except Mrs. ROUS, that I am going to Ireland, as I don't want anybody to know."

It is right that you should have this letter drawn to your attention, because it throws a great deal of light on the testimony given by GOSFORD. He writes, "I only received your letter last night, as I have only just returned from Paris." There is mention here of the illness which he had in Paris. You will remember that Mr. HAWKINS insinuated that he was not ill, but judge of it yourselves. Here is the letter:

"3, Sydenham Road, Croydon.

"DEAR ROUS,—I only received your letter last night before we returned from Paris. I have been very ill for several days in Paris and could not come before. I have seen all those anonymous paragrapt in the papers but have thought them below my notice, has I know the Public will soon be convince of the truth. You know I expected to find in Mr. GOSFORD a friend. But when i arrived in London from your house, i found instead of people in Rios proving my death, it was no other than GOSFORD and Slaughter who have sworn positively that i was dead, and that I died on the 26 of April, 1854, and by so doing have deprived my father and mother out of any of the Doughty estate and have been doing a very nice thing. But, however, I have taken such proceedings against them and others that some of them will be astonish bye and bye. I shall be compeled to eject all the tenants at Tichborne unless they promise to pay their rents to me. Mamma will be here on Sunday. She is going to stay here with me until this business is over. There is a great many people against me, they even employed a Solicitor in Paris to watch my proceedings. I believe MOORE came up from Scotland, but I did not see him. When he came home from Valparaiso he told Mamma that I owed him fifty pound, and got paid. But I will have the pleasure of leting him know what I owed him yet, my dear ROUS. I have bean very slow but very sure. Hoping you are and your family quite well i remain,—Yours faithfully, "R. C. D. TICHBORNE, Bart."

Whether those anonymous paragraphs were concocted by the family I leave you to judge, but certainly their circulation at the time he had just come from Paris was not much calculated to induce him to rush into their arms, as was suggested by Mr. HAWKINS and others. I put these letters before you as containing records of truth; because there is no conceivable reason why the Defendant should have written that which was false. "GOFORD and SLAUGHTER have sworn that I was dead, and by so doing deprived my father and mother of the DOUGHTY estates. I shall take such proceedings as will astonish them. I shall eject the tenants unless they pay their rent to me. But there is the greatest difficulty. They even employed a solicitor in Paris to watch my steps." I entreat you to bear well in mind these observations. These persons appear to have hunted him like wolves, or assassins. You will find that there was hardly a step which the Defendant took in which he was not watched; there was hardly a place that he went but someone accompanied him as a spy. He goes on to say, "I believe MOOOE came up from Scotland, but I did not see him." I am now, Gentlemen, by anticipation putting before you the names of the various persons of whom Mr. HAWKINS will make a great deal of capital by-and-bye. The Defendant goes on to say, "I believe MOORE is coming from Scotland. When he came here he said I owed him £50 and got paid, but I will have the pleasure of telling him yet what he owes me."

Mr. Justice LUSH: Was not he called on the Civil Trial?

The LORD CHIEF JUSTICE: Yes, on the part of the Plaintiff.

Dr. KENEALY: My argument is that if this man had been an impostor he never would have thought of offending a person like MOORE. But he set MOORE at defiance. An impostor would have said to himself, "MOORE has got £50 by pretences that were not exactly right. I do not care about the £50. I will let him keep that money and use the man for my own purposes. I will get him to support my cause." On the contrary, we find him setting the man at defiance and determined not to condone the matter of the £50.

The LORD CHIEF JUSTICE: Does it appear that that demand was ever enforced?

Dr. KENEALY: I do not know.

The LORD CHIEF JUSTICE: *That makes all the difference!!*

Dr. KENEALY: I am reading this to show what was in the Defendant's mind at the time. He was not going to conciliate this man. I am arguing that an impostor would have done precisely the reverse.

The LORD CHIEF JUSTICE: I quite agree with you that if he had demanded the return of the £50 that would have been a good argument, but I do not find that he ever did that. MOORE was called, but he never said so.

Dr. KENEALY: There is only one more letter to which I will allude, and that is a letter to Mr. HOPKINS, which bears the post-mark of 3rd February, 1867.

"MY DEAR FRIEND HOPKINS,—I receved your letter the other day, I should have answered it before if I had not been so ill. I got out a little while yesterday for the first time since thursday but to-day it snowing so hard that I cannot go out at all. I hope i shall soon be able as I feel almost dead shut up in the House so long. I receved a letter from BULPET and HALL this morning telling me he had placed five hundred at my credit at Alresford this very much supprise me has i did not expect or want it. But I suppose by that the Winchesters are beginning to feel uncomfortable. I hope you will forgive me for not writing offener I had not forgot the Vermouth for Mrs. HOPKINS I will bring it down with me when I come please remember me kindley to Mrs. HOPKINS I hope she enjoying good health. Mamma begs to be remembered. I think mamma will come down to Winchester soon. MCCANN my old valet has been with me this two days he is going home tomorrow there are several of my brother officers are to call on me this week. CARTERS my old groom got discharged for coming to see me so i employed himself myself again. He got a letter yesterday when in London praying that he would not have any think to do with me has so many would be ruined by it. CARTER says he told them that if they were all to be hung He would not tell a lie for them. I hope my dear friend to have the pleasure of seeing you.—Truly yours, R. C. D. TICHBORNE.

"6/3/67."

Envelope addressed E. HOPKINS, Esq., Alresford, Hants.

You see from this how it was that CARTER got into his service. He was discharged from his employment for coming to see him, and the Defendant then took him into his house. Was he not bound by every principle of honour to do so?

Reverting now to what I was saying about Lady TICHBORNE, and the extreme animosity of the family towards her, it seems to me that there is one luxury of which the family have been unfortunately deprived. The Defendant is indicted for wilful and corrupt perjury in having sworn that Lady TICHBORNE was his mother; there is one luxury which they have lost, and that was that they have not been able to charge Lady TICHBORNE with perjury in swearing that the Defendant was her son. If such a charge as that had been preferred against her, is there any Magistrate who would have entertained it for a moment? and if there had been a Magistrate found who would have committed her on the charge, could any Jury have been discovered who would have countenanced it? Yet you have the Defendant indicted for perjury for having sworn that she was his mother. We have not the advantage of that lady's presence in Court, but we have the Paris photographs taken of her in 1866, when the Defendant was there, and as we have had our attention drawn very recently to likenesses and resemblances from photographs, I must ask you to take into your hands these two photographs of Lady TICHBORNE and of the present Defendant, and tell me whether, in the upper part of the face, there is not a marked and distinct resemblance. In Courts of Law, in all cases of identity, a matter of resemblance is one which has always the careful attention of the Jury. And you will remember that the Defendant on first entering a certain room, pointed out a likeness, and said: "There is mamma."

The LORD CHIEF JUSTICE: It is very much to be regretted, I think, that the portraits of Lady TICHBORNE have not been produced.

Dr. KENEALY: Do you mean the family portraits? I join most heartily in your lordship's regret.

The LORD CHIEF JUSTICE: *I went over the whole place the other day, and saw the picture, and regretted that it had not been brought forward.*

Mr. HAWKINS: I have no objection to their being sent for.

The LORD CHIEF JUSTICE: It is rather late now, but if Dr. KENEALY wishes it, it is a thing that might well be done. It is much better than having a photograph. There are two pictures, both done by evidently an able artist.

Mr. HAWKINS: I was not aware that they would be required.

The LORD CHIEF JUSTICE: I remember the statement being made about the Defendant's going into the room and saying, "There is mama." I went over the whole place to satisfy my own mind. I think it would have been better to have had the portraits rather than a photograph.

Dr. KENEALY: The only disadvantage about portraits of ladies in oil is that artists are apt to draw on their own imaginations.

The LORD CHIEF JUSTICE: That is so.

Mr. TAYLOR (Juryman): About what ages do the portraits represent her to be, my lord?

The LORD CHIEF JUSTICE: One is younger than the other. I should say one would be the portrait of a lady of about 35 or 36.

Mr. HAWKINS: There is one larger than the other.

The LORD CHIEF JUSTICE: Was there one put in evidence at the last Trial?

Mr. HAWKINS: There was one.

The LORD CHIEF JUSTICE: Was it the one with dark hair and curls?

Mr. HAWKINS: Yes.

The LORD CHIEF JUSTICE: There are two. One seems to have most life about it; there is a great deal of dark hair about the brow; it is a most striking picture.

Mr. HAWKINS: Yes; a full face I think it is.

The LORD CHIEF JUSTICE: I think so, or very nearly.*

Mr. HAWKINS: I am in your lordship's hands about the matter.

The LORD CHIEF JUSTICE: If you think the portraits will assist the Jury, we will have them.

Dr. KENEALY: I shall be glad for my own part, if they are produced.

The LORD CHIEF JUSTICE: You can consider it, but at the present moment you need not pledge yourself.†

Mr. Justice LUSH: There is a more severe fidelity to the originals in photographs.

Dr. KENEALY: Yes, my lord, the sun is no flatterer; he paints us as we are. Those portraits were taken in Paris, when this Defendant was first seen by Lady TICHBORNE, after his return; and I must invite your attention to what appears to me to be the clear resemblance between the face of the Defendant and that of Lady TICHBORNE. I was telling you that in Courts of Law, where a question of identity is raised, likenesses are laid great stress upon. I shall ask you to take these photographs into your hands at the time that we adjourn and look at them; they require a great deal of careful examination, and I shall ask you to exercise your judgment upon them; and this the more because these photographs absolutely negative the supposition raised by Mr. HAWKINS that ROGER TICHBORNE had no peculiarity about the thumb, and that the Defendant began to manufacture a peculiarity about his own thumb. It was not till 1871 that such a suggestion was made, but here is the photograph of 1866 which in one moment destroys the fabric which they have so carefully built up, because the peculiarity exists beyond the possibility of doubt in the Chili daguerreotype of the undoubted ROGER.

Mr. SHEPPARD, a Juror, *shook his head.*

Dr. KENEALY: No amount, sir, of head-shaking will convince me that I am wrong.

The LORD CHIEF JUSTICE: The question is not whether you are convinced, but whether *you can convince us.* Your duty in this Case is not to convince yourself, but to convince us all that it is the other way!

Dr. KENEALY: My lord, I may not be able, but I shall try. I have good eyes, thank God! and unless it is as I say, I must be under some strange delusion.

Mr. TAYLOR (Juryman): You saw a wart on LUIE'S finger in the photograph. (Loud laughter.)

Dr. KENEALY: I saw something which resembled a wart; but it turned out to be a piece of linen rag. But whether it was a wart or not can scarcely affect this question. What I ask you now to do, is to compare the thumb in this Parisian photograph with that which is shown in the Chilian likeness. There is no doubt whatever that ROGER TICHBORNE had such a thumb, and here it is on the photograph of the Defendant. I don't mean to give up that thumb; I mean to stick to it till you can all see it. Compare them well, and the thumbs are identical.‡

Now, if this Prosecution still avers that he manufactured a thumb, what is there that they will not aver?

Mr. TAYLOR (Juryman): I think that we have compared them at some previous period of the Trial.

Dr. KENEALY: I was not aware that you had compared them with anything like the care which is necessary to make a comparison of that kind. Of course you are my masters in matters of that kind, and if you do not wish you need not look at them.

Several of the JURY: Oh, yes.

Dr. KENEALY: And I think you may also get some additional light on this matter by comparing the two faces, and more particularly the upper part of the face of Lady TICHBORNE with that of the Defendant.

[The Court then adjourned for luncheon]

On the Court re-assembling, says the reporter of the *Daily Telegraph*, the Jury examined two of the likenesses of the Defendant, produced by Dr. KENEALY, and admitted that the peculiar formation of the thumb was shown on one of them. They also compared those likenesses with one of Lady TICHBORNE.

Dr. KENEALY (addressing the Bench): I am requested by the Defendant to state that I was mistaken in reference to the £37,000, and that that was not money raised for him, but that it referred to Mr. HOPKINS raising £37,000 on the estates long ago.

The LORD CHIEF JUSTICE: I am glad that we have received that explanation. *I am sorry it was not given before. We should have thought a great deal more of it if it had.* For a long time you were allowed to go commenting on the £37,000 having been raised for the Defendant, he knowing that there was not a shadow of foundation for such a thing.

Mr. Justice LUSH: And you have gone on making this statement after we have given you the opportunity of retracting it.

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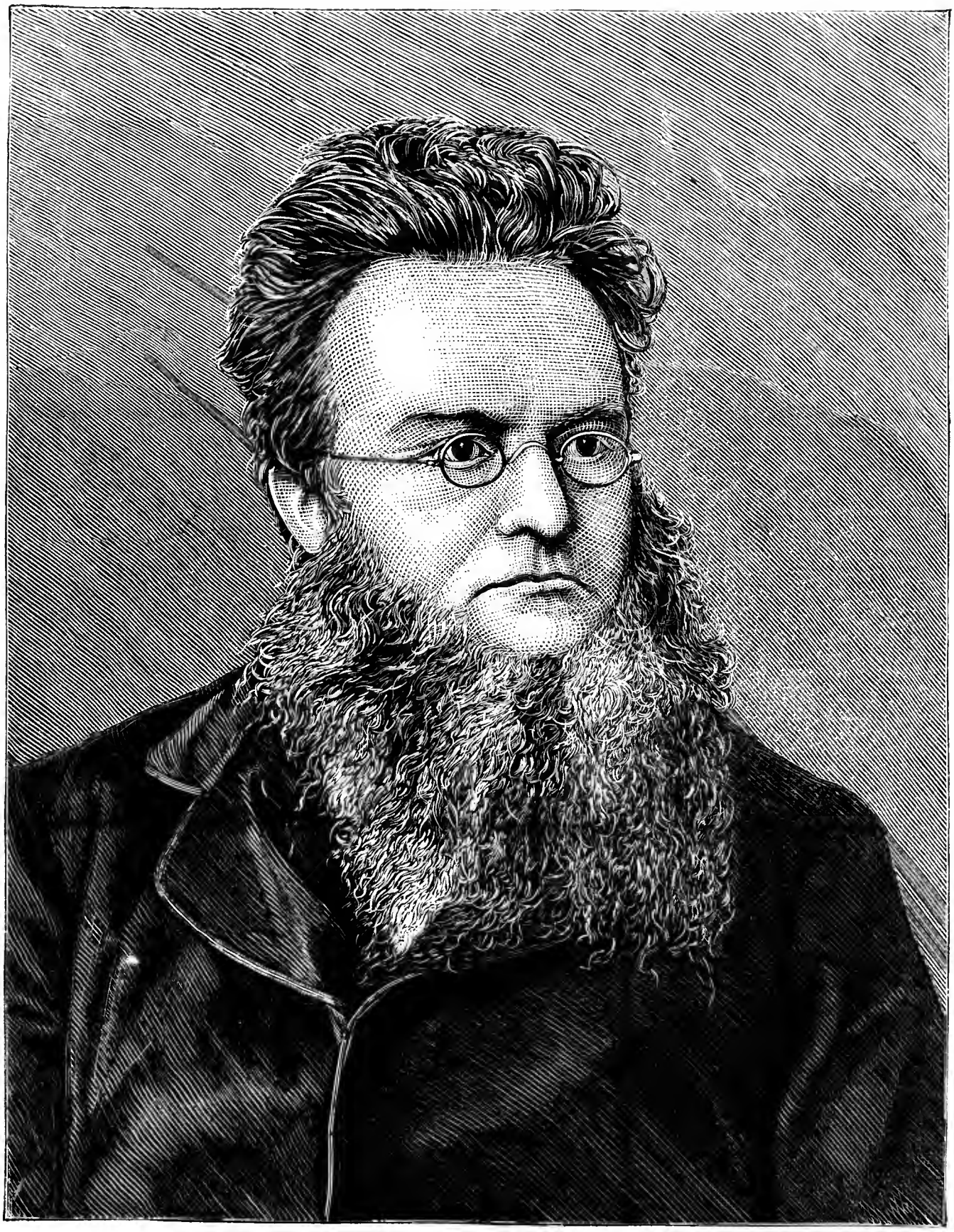
* This is another example of evidence given from the Bench; but we have not noted all the instances.

† Mr. HAWKINS took good care not to produce those portraits. So he kept back the portrait in oil of Sir EDWARD DOUGHTY, from which the juvenile photograph was made. No one knows how the latter may have been "touched up." The portrait of Lady T., here referred to, appears in a miniature form, *Trial*, Vol. III., page 149.

‡ See the *Introduction*, page 118, for proof on this subject, which seems conclusive.



DR. EDWARD VAUGHAN KENEALY, Q.C.

Dr. KENEALY: It was my mistake, my lord. The Defendant is not to blame.

The DEFENDANT: I did correct it, but Dr. KENEALY did not understand me.

Dr. KENEALY: That is true.

The LORD CHIEF JUSTICE: Is it correct to say that HOPKINS raised the money? It was raised by the Trustees, and not by Mr. HOPKINS.

Dr. KENEALY: It is perfectly true what the Defendant says, that he did offer me a correction, but I did not understand it. When the Court adjourned, he spoke to me very earnestly again and explained, and wished me to mention the matter to your lordship.

Mr. Justice LUSH (*very severely*): It was not until you had been invited and were offered the opportunity to prove it.

Dr. KENEALY: I really thought it was so.

The LORD CHIEF JUSTICE: I am glad that it is cleared up: but you certainly did say that the £37,000 passed through HOPKINS's hands, and a great deal of it was swallowed up. I am glad of the explanation, because it was a most serious imputation.

Mr. TAYLOR (Juryman): You asked us, Dr. KENEALY, to compare the upper part of these photographs.

Dr. KENEALY: Yes.

The JUROR: The eyebrows in the two photographs correspond —they are both arched; while in the daguerreotype the eyebrows are quite straight.

Dr. KENEALY: You should compare the whole upper part of the face without confining yourself to one part of it.

The JURYMAN: I am comparing it all.

Dr. KENEALY: Your comparison will have a great effect on the Jury.

The JURYMAN: Not the least.

The LORD CHIEF JUSTICE: Allow me to suggest that you should hear the observations of the learned Counsel and make your comparisons, but that it would be better if you did not enter into any discussions.

Dr. KENEALY: I never object to be set right.

The LORD CHIEF JUSTICE: Certainly; all I mean is that they should not get into a discussion.

Dr. KENEALY: I will not get into any discussion with the Jury. I was putting before you my notion of those photographs. I ask you to remember the time at which that Paris photograph was taken. I invite you to observe that in the eyes of Lady TICHBORNE there is no sign of a "craze," or of a distempered mind. On the contrary, there is all the placidity which we associate with perfect serenity of intellect. But there is also another charateristic in it which I call your attention to, and that is the air of melancholy which is its predominating expression. It may seem strange to you, but I say the same melancholy is the predominating feature of the Defendant's face. (Loud laughter.) I assert it, and I ask you to vouch for the truth of my assertion by your own observation. I invite you to compare that melancholy and pensive expression which you can see stealing over him with the features of the undoubted ROGER. If you want a picture of lassitude, weariness, and gloom, cast your eyes upon the Chilian daguerreotype, and if you apply to it close and careful observation you may see something of the same sort depicted here. That is a weighty argument in his favour. We may all imagine the full-faced features of the butcher of the East-end, but the sad expression that lives upon that face, though broken by fits of almost uncontrolled and boyish mirth, most surely make an impression. When Lady TICHBORNE was lying dead the resemblance between her and the Defendant was marvellous, so that Mr. BLOXAM said, "Can anybody looking at that lady lying there venture to deny that there are the features of this gentleman?" I invite you to the observations made by Mr. BLOXAM. When the attention of ALFRED SEYMOUR was directed to it he did not repudiate the idea. Such conduct is pregnant with meaning. Do you think that a man who used such language would not have behaved differently when challenged by Mr. BLOXAM, if he could have denied the resemblance? I do not fear what your answer will be. Yet Mr. SEYMOUR has ventured to come into this Court and to say before all the world that his sister was living with a lie in her mouth, and that he had told her so.

The LORD CHIEF JUSTICE: *But surely he did not mean an intentional lie?*

Dr. KENEALY: Certainly, my lord. For what is his language here? He informs us that he remonstrated with her for adopting an impostor as her son; he told her ironically that she was the only member of the Family who recognised him. He had also warned her that there was a great Conspiracy; and we have heard talk of the same sort frequently here. Now if there is a Conspiracy, I apprehend there must be Conspirators. Who are they? No one, I suppose, believes Lord RIVERS, Mr. GUILDFORD ONSLOW, Mr. WHALLEY, Dr. ATTWOOD, Mr. SPOFFORTH, Mr. LAMONT, and others confederated together for an unlawful purpose; and yet if *they* are not the Conspirators, I don't know who can be? Mr. ALFRED SEYMOUR, however, having used language of this kind to his sister when she was alive, would, I venture to affirm, have acted very differently from what he did, when, in view of her dead body, he was so challenged by Mr. BLOXAM. In his own evidence he says, "She was living with a lie upon her lips, and I told her so." This is what her brother told her. A lie, remember—not a mistake, a fancy, or a craze. Nobody knows better than Mr. SEYMOUR the meaning of words, and yet he comes here and tells us his sister was living with a lie on her lips, and he told her so.

The LORD CHIEF JUSTICE: He merely stated that as part of the conversation.

Dr. KENEALY: No; with all submission, he told her she was living with a lie upon her lips.

The LORD CHIEF JUSTICE: You construe that as if he meant that she knew it was a lie.

Dr. KENEALY: Yes, undoubtedly; because no one could better understand the meaning of the word "lie" than Mr. SEYMOUR.

The LORD CHIEF JUSTICE: I did not understand Mr. SEYMOUR to say that, knowing him to be an impostor, she was living with a lie upon her lips.

Dr. KENEALY: A lie means something wilful and deliberate. If he had used the word "untruth" it would have seemed different.

The LORD CHIEF JUSTICE: That is *your* contention.

Dr. KENEALY: Nobody who knows the value of words and the meaning of the English language, as Mr. SEYMOUR must be taken to do, could have used them in any other sense.

The LORD CHIEF JUSTICE: I also think I know the value of words, and have some acquaintance with the English language, but Mr. SEYMOUR's meaning did not strike me as at all what you say.

Dr. KENEALY: What other meaning could he have had?

The LORD CHIEF JUSTICE: No person who looks at the words in any spirit of charity would place upon them the meaning you say.

Dr. KENEALY: The man who talks of his sister as "grilling in hell" is not the one to invoke the "spirit of charity." If he had used the word "untruth," it might be so, but "lie" conveys the distinct idea of intentional falsehood.

The LORD CHIEF JUSTICE: Yes, if the context or the surrounding circumstances do not negative that idea. Remember that you did not ask Mr. SEYMOUR what he meant.

Dr. KENEALY: I should never have thought of saying, "Mr. SEYMOUR, what do you," or, "what did you mean by the words you used with reference to your sister?"

The LORD CHIEF JUSTICE: If you had done so, I cannot doubt what would have been the answer. At any rate, if I had had any idea of what you were going to say, I should have asked the question myself, in justice to the Witness.

Mr. Justice LUSH: Take another part of Mr. SEYMOUR'S evidence —that where he said he "urged her;" that he "told her to think the matter over;" that it was "not wise in her" to act as she was doing; and that she should "endeavour to reconcile herself to the idea that the Claimant was not her son."

Dr. KENEALY: That was with reference to the idea of punishment that she might be liable to for supporting the Claimant's Case. More than once I called his attention to the words; and he did not ask to have them modified in any way. He seemed as wide-awake a Witness as any I have seen in the box for a long time. After telling us what Mr. BLOXAM had said, Mr. SEYMOUR winds up with an artful sting: "I never saw the Defendant after I left him there—with his cigar and brandy-and-water." We shall presently find that the Defendant was not the only person who enjoyed a cigar on that occasion.

I will not again refer to what I may call "the infernal dialogue" in the lobby of the House of Commons. It is painful to me, and must be painful to all, to have to call up reminiscences of this kind: and to exhibit again and again before the public the marvellous want of common feeling or humanity which this Family have shewn. I hope I shall not have to recall it: but this I must say before I leave it, I trust for ever, that a man capable in the first place of insulting his sister in the way he did, when she lived, and in the second place of using such language as he did not venture to deny having said about her when she was dead—I say, when we have a man of that kind as a Witness, it is necessary to pause for a considerable time before accepting as gospel all that he may swear.

Mr. SHEPPARD (Juryman): But though Mr. SEYMOUR did not explicitly deny it, he did say what was attributed to him was not such language as he was in the habit of using, and that he did not remember it.

Mr. TAYLOR (Juryman) *(with emphasis)*: He says, three times over, that he does not remember.

Dr. KENEALY: Of course he said so. But I venture to say that if any one of you were accused of such language you would be able to deny it.

The FOREMAN: He repeatedly said he did not remember.

Dr. KENEALY: I am aware of that; but it is language which, if spoken at all, it is impossible to forget, and which a man who had not used it would at once proudly and indignantly repudiate. I say that a gentleman who could use such language ought not to be believed in any Court of Justice on a question of identity, or one in which family interests of such immense value are involved.

Gentlemen, how melancholy and dark grow all the lineaments of this Case as we contemplate them more and more. It is impossible to scan the history of Lady TICHBORNE without the deepest commiseration. Commencing life with a stigma on her birth—through no fault of her own—one would have thought that the SEYMOUR family would have treated her with tenderness. But they never did so. You know as a matter of fact how they behaved to her. She married Mr. JAMES TICHBORNE: and her

existence after that was one continued scene of unhappiness. She had given her youth and beauty to a man who was unworthy of her; who could not appreciate her; and who instead of taking her part in family jars always sided with Mrs. NANGLE and the rest. When he wrote those letters to her father what did he shew but savage boorishness? And here it is right that I should remark, I have not consulted my Client as to the course which I should pursue in this Case: and I do not mean to do so. I am his Counsel—not his Delegate. I comment on the parties as I think they deserve: and I know that many things which I have said have been very disagreeable to the Defendant. But I cannot help that. I must do my duty. How different in all things was the attitude of Lady TICHBORNE. Notwithstanding her life of misery, we may study her letters without discovering one trace of acrimony. She seems to have borne all with noble endurance: and that is the very opposite of what we should expect in a person who had a *tete malade*—a disordered head. In all monetary and household affairs she was thrifty, as nearly all French women are. Whether or not she was persecuted to death—whether or not she was a martyr for the sake of this Defendant here—I leave you to decide. Of one thing there can be no doubt—her undying love for him whom she believed to be her son. She preserved two specimens of his hair dearly treasured up in slips of paper which bear her handwriting: one taken when her son was a child: the other when he was a grown man. I ask you to look at them. My lord at one time seemed to think it strange that she should have described his hair in one of her letters as being "a very light brown:" but look at the lock, which was taken from him when a child, and which she had by her day by day, and which, probably having been newly seen, was in her mind when she wrote: and say whether it does not justify her description of it. Look at the hair, which bears the date of 1867, and ask yourselves whether it is not identical with that of the Defendant? Is there any—the slightest ground—for saying that his hair has, through artificial causes, been getting darker and darker day by day? Just as the Paris photo negatives the wrong—I do not like to and I will not say the false—swearing that there has been on the other side with regard to the manufactured thumb, so I ask you whether that lock does not dispose of any notion that his hair has been tampered with for the purpose of this Trial? Bear in mind that Mr. HODSON, no advocate of the Defendant, expressly states that his hair is of the same colour now as it was on the voyage from Panama. That evidence, corroborated by this hair, ought to make you distrust the evidence of the Crown's Witnesses. I commiserate the Prosecution upon having these terrible blemishes in their Case, as no doubt they will commiserate me upon having Mr. LUIE; but I wish you to see that there are blots on the other side infinitely of a deeper dye than any that may be on ours. Indeed, I had made a long catalogue of them long before I thought it would be possible for the Prosecution to throw any Witness of mine in my teeth. It was Lady DORMER, I think, who said with a sneer that the Defendant's hair was growing darker every day; but I produce that lock, and leave you to judge of the value of her ladyship's evidence. It seems to me that the tactics which were pursued at the Law Institution have been repeated here. You know that a great many persons amused themselves there with laughing and grinning and sneering, while the Defendant was giving his evidence, and that he was thereby greatly disconcerted. Well, there have also been a great many buffoons in this Court, who have constantly been laughing at everything, and even at nothing, and trying to throw ridicule on the Defendant's Case. They may have been here accidentally; but it is much to be lamented that they should have acted in such a manner in a Court of Justice, whose proceedings ought to be conducted with gravity and decorum. Serjeant PARRY said the other day that I had no sense of humour—which, by-the-bye, the newspapers printed "sense of honour." (A laugh.) It may be true that I have no sense of humour; but, at any rate, humour, in my opinion, is out of place in a Court of Justice, where everything should be done with as much decorum as if it were a temple of religion. For my own part, I think that jokes are as much out of place in a Criminal Tribunal as they would be in a Cathedral. Still, notwithstanding all that has taken place to distract your attention, I have the most unbounded confidence in what will be the conclusion you will arrive at in this Case, and in that confidence I trust that I shall not be deceived.

Gentlemen, there is a lady in these proceedings whose conduct may very well be compared in all material things with the conduct of Lady TICHBORNE, and that is Lady DOUGHTY.* I shall have a good deal to say of her before I have done. I ask you to contrast Lady TICHBORNE with Lady DOUGHTY. The Defendant says that when he was at the Hotel de Lille et D'Albion his mother visited him with maternal affection. The Defendant, in his answer, goes on:—

"I admit that my identity with the said ROGER CHARLES TICHBORNE is denied and disputed by the said TERESA MARY JOSEPHINE TICHBORNE on her own behalf and on behalf of the infant Plaintiff in this Suit; but I deny that my identity is denied by all the other members of the TICHBORNE family. On the contrary, not a single affidavit has been made and filed in this Suit, or in the said Suits of 'TICHBORNE v. MOSTYN' and 'TICHBORNE v. TICHBORNE,' by any member of the TICHBORNE family, denying or questioning my identity with the said ROGER CHARLES TICHBORNE, except by the said TERESA MARY JOSEPHINE DOUGHTY TICHBORNE, who was a mere child of thirteen years old, or thereabouts, when I left England in the year 1854, and to whom I was not personally well known. My aunt, Dame KATHERINE DOUGHTY, relict of the said Sir EDWARD DOUGHTY, received from the said ANDREW BOGLE a letter dated the 29th of August, 1866, written and sent to her from Sydney, announcing my return to England in the following terms, that is to say—

"'Sydney, August 29th, 1866.

"'MY LADY,—I hope these few lines will find your ladyship, Mr. and Mrs. RADCLIFFE and family quite well. I send your ladyship these to inform your ladyship that Sir ROGER and Lady TICHBORNE are in Sydney, also one little girl, six months old, that they leave Sydney by the mail (Panama and New Zealand) on the 1st proximo, and I am going with them. Sir ROGER goes direct to Paris to his mother, and I am going to take her ladyship from Southampton to Upton. Her ladyship is a native of Australia, 22 or 23 years of age. We have had an extremely cold winter this year, and I have had my rheumatics very bad in consequence. My family are all quite well, and I am bringing the youngest with me to England. I shall be glad to see your ladyship once more, a pleasure which I thought I should not enjoy again, but, please God, in two months time I shall set foot in old England, and see my friends once more.—With my duty to your ladyship, I beg to remain your ladyship's humble servant,

"'ANDREW BOGLE.'"

"I believe that my said aunt and other members of my family also received a mass of evidence from different persons, proving beyond doubt my identity, and that my said aunt wrote and sent to Mr. FRANCIS JOSEPH BAIGENT, of Winchester, an old and esteemed friend of our family, a letter dated the 19th day of October, 1866. in which she stated as follows:—

"'The mass of evidence I have now seen from different persons writing from Australia, together with what the Dowager Lady TICHBORNE admits, leaves no doubt this person must be ROGER; but the circumstances altogether make it a painful event in the family.'"

Now, Gentlemen, that is a very remarkable passage in Lady DOUGHTY'S letter to Mr. BAIGENT in which she mentions *the mass of evidence from Australia*. Lady DOUGHTY was examined under the Commission, but under such circumstances that no Counsel could do justice to his Client, and whatever might have been gathered from that lady with reference to the mass of evidence does not appear. Unfortunately she died before being cross-examined properly; or cross-examined here. Her testimony was taken in a violent hurry; and her cross-examination was negligently gone through. She was not questioned upon half the matters that she should. Hardly any Counsel can successfully interrogate a Witness in the throes of death: and the result is that much that might have been elicited from her is lost. I should like to have had her explanation of the painful event. Can it be questioned that she had heard anything pro and con about this Defendant; yet she is compelled reluctantly to come to the conclusion of his identity. Having then no moral "doubt" on her mind that the long lost ROGER had come to light, how came it to pass that she turned against him? The only thing that presents itself by way of palliation, or excuse, is that which happened relative to Lady RADCLIFFE. That I shall speak of by-and-bye. Well, bear in mind that that letter was written in October, 1866. He goes on:—

"Just previously to my arrival in England, as aforesaid, and on or about the 15th day of December, 1866, the said TERESA MARY JOSEPHINE DOUGHTY TICHBORNE wrote and sent to my said mother a letter in the words and figures following, that is to say:—

"'My dear Mama,—As you have always been so kind to me in my trouble, I feel sure you will not take it amiss my writing to you in my present difficulty, as it seems there is a possibility of my jointure being stopped until ROGER has arrived; therefore you will oblige me very much if you would inform me when you expect him to arrive, and if you still feel quite certain of his joining you in France. Excuse haste, dear Mama.—Your affecte. daughter,

"'TISSIE TICHBORNE.

"'Dec. 15, Hyde House, Brimpton, Reading.'"

Gentlemen, at that time, whilst those letters were being written in England by Lady DOUGHTY and the sister-in-law, the Defendant tells us that he was reading articles in New York denouncing him as an impostor. It is a singular thing that while these persons have no doubt upon their minds that he was the real ROGER, some person should have been using his pen to denounce him as an impostor. Then he says:—

"During the time that I was staying in Paris with my said mother, as aforesaid, and on or about the 19th of January, 1867, the said TERESA MARY JOSEPHINE DOUGHTY TICHBORNE wrote and sent to my mother a letter in the words and figures following, that is to say:—

"'MY DEAR MAMA—Hyde House—As I have not heard from you lately, I hope that you are not ill with this cold weather. I hear so many reports and so different, that I am going to ask you to let me have a line to say whether you recognised ROGER as

* See Note on Lady DOUGHTY, *Trial*, Vol. II., pp. 292-303, and her Deposition, *id.* 324.

soon as you can, as I feel so anxious to know. Poor Sir JAMES FITZGERALD is dead. BLANCHE was with him, but he did not regain his senses at all, but died quietly at last. R.I.P. Mrs. WELD BLUNDELL is going to have another baby in April. She will have a large family—12 I think. GERTRUDE enjoyed herself much at Wardour. I am happy to say baby is very well indeed. Your namesake, you know—HENRY.—Hoping to hear from you soon, I remain always your most affectionate daughter,

"'TISSIE TICHBORNE.

"'Hyde End House, Brimpton, Reading, Jan. 19th.'"

"In reply to such letter my mother wrote and sent to the said TERESA MARY JOSEPHINE DOUGHTY TICHBORNE a letter in the words and figures following, that is to say:—

"'MY DEAREST TISSIE,—Many thanks for your kind letter which I received yesterday. I have not written to you lately because my time was taken up with attending on my dear son ROGER. I have fully recognised him, as it is really him, and I cannot conceive those who knew him very well and who will not recognise him. BOGLE has been here; but he is much troubled with rheumatism, and I am afraid he has not seen much of Paris beyond his bed-room; however, he is much better. I told ROGER yesterday that I was in hopes one day to hold my dearest little grandson in one hand, and my dear little granddaughter AGNES in the other. He said he hoped so. I would go back to London immediately, only I am not very well, and the Paris water disagrees with me very much. I am obliged to wait a little, as the weather is so cold at the present that it would make me worse. As soon as I can, however, I will go back to London. You do not mention whether my dearest little HENRY'S hair begins to grow. I shall be so glad to see him when I go back to England. I suppose Mrs. WELD BLUNDELL and her daughter will be confined at the same time.—With very kind love to yourself, and kind regards to Lady ARUNDELL, ever believe me your affectionate and devoted mother,

"'21st January, 1867.'" "'h. f. TICHBORNE.

Now, Gentlemen, is it possible for anyone to have exhibited finer or more affectionate feelings than these shewn in those documents? and do they not favourably contrast with the wholly different language and conduct of Lady DOUGHTY? That lady was buried with respect, with reverence, with the solemnities of religion. But what took place when the poor mother was entombed? Can anyone conceive a greater, a wilder, a more terrible or outrageous insult on her memory than what was done at the funeral of Lady TICHBORNE—whose solemn hour of burial was polluted by the presence of three such persons as MARY ANN LODER, FREDERICK CRONIN, and Mrs. LAWS? Those persons were taken there by what the Lord Chief Justice called the "Shepherd of Mr. HAWKINS'S flock," WHICHER, and a very nice shepherd WHICHER was: equal, I fancy, to JACK SHEPPARD himself. If the family were desirous of desecrating and dishonouring her tomb to the greatest extent, they could not have done so more effectually than by their action at her grave.

Mr. Justice LUSH: They were not taken by Mr. SHEPHARD. (Much laughter.)

Dr. KENEALY: No, my lord; I said "Shepherd" WHICHER.

The LORD CHIEF JUSTICE: All that I said about WHICHER was that you made him out to be the Shepherd of the flock.

Dr. KENEALY: The phrase was not mine, but your lordship's.

The LORD CHIEF JUSTICE: I thought you made it out that WHICHER was "the Shepherd of Mr. HAWKINS'S flock"—not me.

Dr. KENEALY: If I made it out to your lordship's satisfaction, I am content.

The LORD CHIEF JUSTICE: I cannot say that you did. You represented him as having suggested to the Witnesses what they should say——

Dr. KENEALY: And to a great extent proved it.

The LORD CHIEF JUSTICE: I do not think so; but what I said was intended to represent your expression, and not my opinion.

Dr. KENEALY: Your lordship may have said it sarcastically, but I willingly use your lordship's phrase. Well, Gentlemen, you remember the miserable, the shocking scenes that occurred, and which were described by ALFRED SEYMOUR. You remember the hustling of the Defendant by that gentleman. You remember LODER fainting in the arms of WHICHER. The way in which I use these things is with the object of showing to what lengths they went for the purpose of bringing contempt and scorn upon the coffin of their dead sister. The animus of the Family ceased not with her life, but followed her to the grave; and now pursues the Defendant in the virulent opposition to the attainment of what I say are his just rights. I suppose it is possible to prosecute offenders, or supposed offenders, without an absence of decorum or magnanimity. Yet in this Case I am compelled to say that from the beginning even to this hour there has been a complete forgetfulness of that dignity, serenity, justice, and magnanimity which ought to be inseparable from the administration of justice.

The LORD CHIEF JUSTICE *(in a whisper to* Mr. Justice LUSH *loud enough to be heard by all in Court)*: Here's a fellow!

Dr. KENEALY: Gentlemen, am I right in insisting that moderation, temper, and decorum should in all things characterise all who are concerned in a great Trial like this?

The LORD CHIEF JUSTICE *(again to* Mr. Justice LUSH *as before)*: Here's a fellow!

Dr. KENEALY: Have these qualities been shown here? If the Family, who instruct Mr. HAWKINS, are animated by vindictive feelings, they ought not to exhibit them in this Court. But I call you to witness that they have; and History will testify that for many years—I had almost said centuries—there has been no such disgraceful Trial as this. In no part of it can I descry, even faintly, the least spirit of that Wisdom, Justice, and Truth, which ought to characterise a public Prosecution. Rather to win the battle than to ascertain the truth seems to be the rule on which everything has been conducted since this Case began. But this has been ever condemned by all former Judges; nor need I again remind you of what I have already cited on this subject.

How many of their Witnesses have taken the cue from what they saw done! How many have introduced the manners of Bartholomew Fair into this grave Court! How many by their language, or their demeanour, have brought forcibly to mind the following passage in *Taylor on Evidence*. He says: "While simplicity, minuteness and ease are the natural accompaniment of truth, the languages of Witnesses coming to impose upon the Jury is usually laboured, cautious, and distinct. So when we find a Witness over-zealous on behalf of his party; exaggerating circumstances; answering without waiting to hear the questions; forgetting facts wherein he would be open to contradiction, minutely remembering others, which he knows cannot be disputed; reluctant in giving adverse testimony; replying evasively or flippantly; pretending not to hear the question for the purpose of gaining time to consider the effect of his answer; affecting indifference; or often vowing to God, and protesting his honesty; we have indications more or less conclusive of insincerity and falsehood. On the other hand, in the testimony of Witnesses of truth there is a calmness and simplicity, a naturalness of manner, an unaffected readiness and copiousness of detail as well in one part of the narrative as another, and an evident disregard of either the facility or difficulty of vindication or detection."

Gentlemen, bear in mind, I entreat you, the intimate connection of all these people; of the ARUNDELLS of Wardour, and the TICHBORNE family. The second daughter of Sir HENRY JOSEPH married Lord ARUNDELL. The sister of the late Lord ARUNDELL married Sir EDWARD DOUGHTY: the daughter of the same lord married ALFRED TICHBORNE. This interlacing of the blood; this breeding in and in may possibly lead you to think that such unusual family ties may provoke a more than common feeling of clannishness when the pure and icy crystal of Lady RADCLIFFE'S character is involved. Mr. REGINALD TALBOT also is intertwined in blood, two or three times—and *he* is one of Lady RADCLIFFE'S Knights: a *preux chevalier, sans peur et sans reproche*.

Here may I ask you with what object but an evil one could they have read that cruel letter of JAMES TICHBORNE to his father-in-law, Mr. SEYMOUR? It is a brutal letter—one that no true gentleman could have written about his wife to his wife's father. I may be abused— I *shall* be abused for my strictures upon it: but I cannot restrain my feelings. If they can prejudice *you* against that unhappy lady by any means, they will. Hence their production of that letter which has no bearing whatever upon this Case—which is introduced only for a bad purpose. First, she is crazed; second, she is selfish; third, she is dirty; fourth, she is abusive: fifth, she is ill-tempered; sixth, she hated the English; seventh, she is licentious; eighth, she is jealous of her husband's family—in a word she is all that is detestable. Oh horrible!—most horrible! Not content that she should be, like one of SHAKSPERE'S heroines,

> 'Do to death by slanderous tongues,
> Is the ladye that here lies,
> Death in guerdon of her wrongs,
> Gives her fame that never dies:
> So the life that died with shame,
> Lives in death with glorious fame."

Not content, I say, with this, they have poisoned her *even after death*. Like vampyres they have torn her in pieces in the grave. Nay, they have pierced and penetrated even beyond the TICHBORNE Vault; and they can discover that she is "*grilling in Hell*." Her own brother avers it, and the whole conduct of this Prosecution endorses the horrible supposition. Oh! as you are Men, I pray you to resist them. Defeat these vile maligners and Conspirators. Let the vituperation of the dead, of this noble, suffering, innocent Lady fall in lightnings upon their own heads; and let him who seconds them in the attempt be ever infamous before men, and accursed of God, now and for ever.

The truth is, they were a wretched-hearted, quarrelsome family. Sir EDWARD DOUGHTY and his brother hardly ever met without an explosion. They remained separated and estranged for years. The SEYMOURS quarrelled with their sister, poor Lady TICHBORNE. Sir EDWARD did not see his brother's wife for fifteen years. ROBERT and Mrs. NANGLE rendered themselves utterly distasteful to this unhappy mother. Sir JAMES appeared to have incited CHATILLON and GOSSELIN against her. ROGER described his home as a sort of hell upon earth. Lady DOUGHTY was a hypocrite, full of cant—surrounded by priests who poison all society in which they mingle. ROGER detested the whole of his relations so much—doubtless for good reasons—that he left the reversion to the Tichborne and Doughty Estates to a Jesuit relative, EVERARD ARUNDELL, which would mean, of course, to the Church of Rome; though this he probably did not contemplate. He deliberately excluded all his cousins, all the SEY-

MOURS; all the NANGLES. You may judge from this how thoroughly they would hate him. And this Trial demonstrates that hatred.

Against the testimony of this true and tender mother, we shall be asked to weigh the evidence of those various irate people; of those priests—that Abbé SALIS—that lacquey CHATILLON—Mrs. NANGLE, who from the first detested Lady TICHBORNE, and who no doubt believes that she is now in the Pandemonium to which Mr. ALFRED SEYMOUR consigns her. And GOSSEIN the valet! And BURDON! And COYNE! Oh! what blasphemy against the voice of Nature!—of God, as speaking through the mother's heart. And to this conclusion you are summoned. Oh! most monstrous result! But I defy you to come to it. Yet, if we are to believe what is rumoured around, the whole thing is settled and arranged. The Defendant is already convicted—his sentence is pronounced—his dungeon is prepared. Gentlemen, you will be asked, I have no doubt, with a triumphant air why I did not do this and that, and something else? Why I did not open certain evidence? Why I did not cross-examine to certain points? Why I did not answer some ugly questions? All my sins of omission and commission will be put before you with due care and emphasis: and with all the fraudulent skill of a sophist who is master in his art. I do not say that this is not legitimate on the part of my foes. Once for all, I can only say again, that from first to last in this Trial I have been living from hand to mouth; never knowing what Witnesses were at hand: never knowing what they could really say: never sure that they would be here at all. I have had no help where I ought to expect it. I have had no real loyalty, or skill, or aid in those who should have given it. The Defendant himself will tell me nothing: and his few advisers whenever they approach me encumber me rather than give help. You see the piles of letters and post-cards here before me every morning as I take my place in Court. The great majority of these contain only insult, abuse, and menaces; and my mind is unhinged before I open my mouth.

Gentlemen, I may be wrong, but I think I can trace in much that has happened here, a desire to arouse your English prejudices against this French lady. Sir JAMES TICHBORNE is always put before you as a model JOHN BULL. His wife is always represented as with a morbid dislike of all that is English. This is one of the petty meannesses in the Case, which I almost disdain to touch; but I should not do my duty if I did not point out and warn you against it. All that I have said upon this and other subjects no doubt will be systematically misrepresented at the proper time, when my mouth is sealed. But I adjure you to bear in mind all that I have before said, and that I now repeat: and to interpose your own memory, and your honest judgment against the arts that may be resorted to to malign and lead astray into evil currents.

Gentlemen, you will be asked, Why did not the Defendant write to Lady DOUGHTY and communicate his design of coming back? Bear in mind what is alleged to have happened in the summer or autumn of 1853. Remember that after that period, ROGER and his Aunt never met; that he was forbidden to come near their house:—nay, even to reside in the same County. A correspondence, false and hypocritical on both sides, existed—but they were absolutely estranged from each other. After he returned to England they never met. I say he dared not meet her—knowing her knowledge of what had happened. I say she would not meet him—probably because she detested his very name. Well she might if what he says were true. I treat with scorn, therefore, such a question as this. So far from weakening my Case, the fact strengthens it. It unfortunately for them corroborates the story, which he never would have told had not his own Counsel in the first Trial unfortunately compelled him.

You may be asked, Why did this Defendant employ HOLMES? Why did he not employ the old family lawyer, Mr. HOPKINS? Alas! why does he do any or all the things that he does? Why does he leave England for such a country as South America? Why does he take to butchering and driving the mail? Why does he form connections with the bush? Why does he pass as CASTRO, and for aught we know under other names? Why does he do things that he may not mention lest he should criminate himself? Why does he, with full knowledge of everything, gleaned, as they say, from the Baronetage, from the 'Illustrated London News,' make a Wagga-Wagga Will which negatives all knowledge? But need I recapitulate? Need I go through the long bead-roll of his follies? Had he not been the most heedless of the rash, the wildest of the most reckless, he would not have been here this day, on his Trial, for I know not how many assignments of perjury!

Gentlemen! You will be told that I am not justified in the language which I have used. I have already had a foretaste in the daily papers—nay, even in this Court—of the accusations that will be brought against me. For these I am prepared: and I can only rely upon you, as my vindicators from foul, and false, and fraudulent charges. I and my client stand alone, and I might almost have said unaided, against a powerful Government, a mighty Papal combination; a family which through its ramifications, personal and political, might well make any man pause before he attacked them, and might well make the Defendant wince before he opposed them. But are we to succumb because Might is great, and Right is weak? Heaven forfend that we should. Ought I to crawl on my knees and kiss the hand that flogs me, and through me, my Client, because, forsooth, I am in the presence—in the hold or grasp of a Giant? No—a thousand times, No! The very force of mine adversary makes me more resolute to grapple with him—makes me more resolved to fight him to the last. He is backed by colossal Power. He will address you in a tone of authority and command. He may probably put on for aught I know, the attitude of an injured innocent, of a suppliant for protection at your hands. There is hardly any phase which this Crown-chameleon will not assume. He will bewail the injured character of Lady RADCLIFFE and BELLEW; he will be eloquent about MINA JURY; he will appeal for pity on behalf of those respectable women, Mrs. JACKSON and Mrs. FAIRHEAD, of GOSFORD, and perhaps HOPWOOD. He will entreat you to put faith in DONNA HAYLEY. If I have used a strong expression here and there—what will he not make of it? He will blind you to all the provocations which we have received; brutal provocations I might call them. He will studiously keep in the background the myriad insults—the vile interruptions, and the still viler insinuations resorted to day by day. He will put prominently before you whatever weakness we have shown, and still keep sedulously in the background the mighty—the overwhelming force of the evidence which we have produced. This he will do—and he will call it Justice! O base perversion of that holy name!

Gentlemen of the Jury, as you would hope for justice yourselves, I beg of you to keep before your eyes perpetually in this Trial the august and beautiful form of that Divine Essence. When you are told of all the things that I have said, bear in memory all the things that I might have said, but have not. Have I not been on the whole forbearing to this Family, who seem leagued together to perpetrate a wrong upon a man who, they think, has despised, dishonoured, and disgraced them—who has sullied the pure TICHBORNE blood by an alliance with a woman from the Australian bush; by an association, perhaps, with bandits and murderers? Have I been too hard upon those French priests, who, if their own account be true, made a practice of denuding Lady TICHBORNE of her money, though they knew all the while that she was not in full possession of her senses? Have I been too severe upon the GOSFORDS, and with Witnesses of that class, who seem to have a special interest in convicting this man? Heaven above knows that I feel I have not, and that, on the contrary, after the infamous language and the equally vile insinuations indulged in here, I have been only too mild—too forbearing.

Gentlemen, Mr. HAWKINS opened his Case with a well-connected narrative of all the life—of all the sayings and doings of ARTHUR ORTON. I suppose he will wind up in the same manner. It is easy to combine the false tales of a number of persons, and weaving them into one, to ask you to believe the whole. It is an effective mode of palming off a series of fables, and depicting them as true. But if the various Witnesses cannot be relied upon, of what value is their connected story? Does any one suppose that after seven years' plotting, with all the aid that money, that skill, that unscrupulous arts could lend them, they would not be able to concoct a fair-seeming story? and when they play a game for such an enormous stake as is here? What I ask you is, *not* to credit that story in the way in which it may be presented to you, but to take it to pieces by considering the Witnesses to it, one by one; and then asking yourselves, whether they are persons on whom any one could rely?

Gentlemen, it has been no part of my instructions—for I hardly had any—to comment, as I might, on the behaviour of the late Chief Justice BOVILL in this Case. He has gone to his account. He has answered for his life before the Great Judge. I am not his accuser. I have always disclaimed the idea of playing such a part. But am I—as the advocate of this gentleman—bound to approve of all he did? Am I compelled by my position to say that I think he held the scales of justice impartially? I would that I could;—but no, I cannot. Nobody who has scanned his conduct in the Common Pleas Trial can truthfully say that he was impartial—that he entered upon the Case without a foregone conclusion, or that he may have come to it with a sincere soul. God forbid that I should say he had not. But I take things as I find them; and I lament his bias. I might have said much that I have not said. But I have foreborn. I have no desire to hold up to the scorn of the Country the partiality in his judicial capacity of any of the Judges. I could not approve. Perhaps I may have blamed. But I have not uttered half what I felt concerning that Trial. I have confined myself, as a rule, to what has taken place here: and that, I think, has been quite enough to exercise all the powers of criticism, or animadversion if you like, which I may possess.

I am told by the newspapers that I have acted wrongfully in censuring the Government. Gentlemen, we know full well that every Government for the time being is in the eyes of certain journalists wholly faultless. Members of the worst administrations that even this Empire has had, like the Sovereign, can do no wrong. When a man is taken within that sacred fold, he ceases to be a mortal—he becomes impeccable and infallible, like the Pope himself. This is the view of many: of their sincerity I pronounce no opinion. But it is not, it never has been, mine. I think that the Government should not as a body have lent their names to this Prosecution. I hold that the PITTENDREIGH Forgeries, if they stood alone, should have made them keep aloof from a polluted Case. They have not done so—therefore I censure them. I may make them my foes. I may, in so speaking,

erect a barrier against myself to all the distinctions to which the Bar leads. Well, I cannot help this. I aspire to no honours that are to be won by dishonour. I cannot be a slave. I will not be a sycophant. I cannot speak that which I do not think—no—not if the diadem of the world were to bind my brows. I do not know what your politics are. I will not enquire. But even if you are all in favour of the Government which instituted this Prosecution—nevertheless I cannot, and I will not, praise them, even to win your favourable ear.

I cannot tell you the loathing with which I have watched this Trial. Heaven knows that I affect no superiority to my fellow men. But I feel the feeling of SWIFT, as he contemplated the knaves around him. He perpetuated that sentiment upon his tomb, when he ordered to be graven upon it the memorable words *sæva indignatio*—"fierce indignation." So I, as I contemplate this Prosecution, am saturated with "fierce indignation," as I meditate upon what I have beheld. Good GOD! That men will do these things for a little money, or to gratify some wretched passion! Oh! how much they are to be pitied. May Heaven pardon them—but *I* cannot.

Let me put this serious, solemn, unanswerable question to you: Did the TICHBORNE Family ever really think that ROGER TICHBORNE perished in the seas? What signs of that belief did they evince? Did they ever go into mourning? No. Did they ever erect a monument, or a memorial stone, or even a tablet? No. Did they ever sympathise with, or congratulate ALFRED TICHBORNE on his accession to those vast estates? No. Did they ever contradict the communication which the mother made to the ARUNDELLS under the influence of the highest, purest, noblest sentiments, when the marriage with her second son ALFRED was under consideration—namely, that ROGER had been rescued, and was alive in Australia? No. Did they scout the Impostor when they first came into his presence, as a man urging pretensions that were absurd and impossible? No. It is true they denounced him in the papers, before they saw him. But in his actual presence they were abashed—in their hearts they confessed him to be the true man. *You* do not believe those NANGLES. Who can? Away then with the idea that they would have welcomed this Prodigal Son—that they would have taken him to their bosoms as the "lost sheep." We have been sickened with the suggestion. At all events *I* have been. I have witnessed nothing in this Prosecution but the most furious, malignant, and blood-hatred of this unfortunate strayer from the fold.

Gentlemen, you will be reminded, until you are perhaps as sickened as I am, that the widows and children of the 'Bella' sailors have never heard from the survivors of that ship. Is it certain, *in the first place, that the few who were rescued had widows? or had children?* It will be assumed—*everything is assumed here*—that they had—but where is the proof? Did the 'Bella' come to her end honestly? Oh! how I have been attacked for a suggestion; a mere suggestion that she did not! Are all the ships that are insured for £18,000 honestly wrecked? Of course they are. Ask Mr. PLIMSOLL, and he will tell you this is a grand and certain fact. A scuttled ship is a thing unknown in the annals of Liverpool. When that enlightened town was foremost in its agitation against the Slave Trade, it is said that its leading men on 'Change were among the leading Slave-traders. These honourable merchants were foremost in their denunciations of that abominable traffic. They subscribed large sums for its suppression. They went upon the public platforms—they glided into churches, chapels, and cathedrals; and denounced it with the most furious fervour. During all this time, those shopkeepers were deriving immense profits from the infamous traffic which they so piously denounced. GEORGE FREDERICK COOK, the actor, in one of his wild outbursts, told them so. He avowed from the Theatre Royal that their very pavements in the streets were cemented by human blood—I beg pardon—by African blood, which, I suppose, is not human, because our African brothers are blacks.

The LORD CHIEF JUSTICE: Surely, Dr. KENEALY, all human beings are of the same blood.

Dr. KENEALY: Well, my lord, so they are: but all persons do not think so. And the Liverpool shipowners of that age, I suppose, did not believe it. And there is a Novel, Gentlemen of the Jury, written by an old friend of mine, Dr. MAGINN, entitled "*John Manisty*," in which all those things appear: their cant, their hypocrisy, their slave-dealing are revealed. And therefore I have but small faith in the Liverpool Ship-Insurers.

The LORD CHIEF JUSTICE: Dr. KENEALY, I cannot tell you how shocked I am to hear you speak in this way. There is not one tittle of evidence or proof in this Case which could in the least degree bring the Liverpool owners of the 'Bella' within the purview of your observations, and I feel imperatively called upon to protest against them.

Mr. Justice LUSH: So do I—most emphatically.

Mr. Justice MELLOR: And so do I.

Dr. KENEALY: My lord, I bow to what your lordship says. I admit that I have given no proof of what I have suggested.

The LORD CHIEF JUSTICE: Then why make the suggestion?

Dr. KENEALY: Gentlemen, did the Government act fairly or honestly in charging this gentleman with the crime of Forgery? They meant it, or they did not mean it. I say they did not mean it, or they would have proceeded upon it. They have abandoned that charge. Why? They have not deigned to say. Anything is enough for you, as they profess. Suppose they had arraigned him on the accusation of Forgery. Oh! how I wish they had. I would have put their own PITTENDREIGH Forgeries into the hands of the Judges and the Jurors, and have said, These are the Forgers who charge us with Forgery. What would they have said? Nothing. And so they abandon their Forgery Indictment.

Gentlemen, the Counsel for the Crown, I suppose, would desire that *I* should confine myself within the narrow groove in which *he* has chosen to walk; should restrict myself exactly to the lines which *he* has marked out; and should not deviate from them in the least; but should perambulate within certain fixed leading strings. Of course, this would suit the policy of the Prosecution. I was to assume that the Family wanted only what was right; that the Crown would call no Witnesses that were wrong; that everything on the part of the Prosecution was noble, truthful, generous, honest, straightforward, and so on. I wish I could do so. But I cannot. On the contrary, I find it in all things the reverse.

My lord, I am sure, without meaning it, falls into the same pit. He assumes that the Crown is actuated by the sublimest notions; that they are not connected with the Forgeries; that they desire that Justice only should be done; that they have paid no Witnesses with an undue motive; that the whole and sole object which they have in view is to maintain public justice; that all their Witnesses are truthful——

The LORD CHIEF JUSTICE: *I never said so.*

Mr. Justice MELLOR: No one on this Bench has put that forth.

Mr. Justice LUSH: *I* never made any such intimation. Nor did the Chief Justice, or my brother MELLOR.

Dr. KENEALY: Gentlemen, it is quite true. None of my lords ever said so. And yet, somehow or other, the idea seems to be conveyed that *all* the Witnesses for the Crown are honest; and *all* the Witnesses for the Defence are either perjured or mistaken. Such, I am sure, is the idea communicated to the Jury, and to the outside world.

Mr. TAYLOR (Juryman): Not to me.

The FOREMAN:-Nor to me.

Mr. SHEPPARD (Juryman): Nor to me.

Dr. KENEALY: Gentlemen, I am glad to hear *you* say so; but I, poor man, have been in a dream. I suppose that none but a visionary would believe in this Defendant, and yet I do. However, I am glad to hear all these disclaimers; because they fortify me in the hope that this gentleman will get justice.

How trivial are the inducements which lead to the commission of the greatest crimes, is proved every day. Take the case of MARY ANN COTTON, tried at the Spring Assizes of Durham (March 6) in this very year, before Mr. JUSTICE ARCHIBALD. The specific charge on which she was tried was that of having poisoned her stepson, a boy eight years old; but the importance of the case cannot be understood without a brief review of the woman's history. She was born in 1832, near Seaham Harbour. After working for some time, first as nurse and then as dressmaker, she married a labourer named MOWBRAY. With him she went to the South of England, but returned to the North at the end of five years. During her absence she said she had had four children, who had all died. MOWBRAY obtained employment at the South Hetton Colliery, and they lived there some years. In 1860 another child died, and the surgeon certified that the cause of death was gastric fever. They then went to live at Hendon, and here, in 1864, a sixth child, one year old, died. In January, 1865, her husband died at the age of 47, and in May of the same year a seventh child, four years of age, died. In the cases of both these latter children the doctor assigned gastric fever as the cause of death. The next year her mother died very suddenly, after she had gone to attend her. Most, if not all, of these persons had their lives insured, and on the death of her husband she received a sum of £35. She then obtained a situation at an Infirmary, but soon married one of its inmates, named WARD. He died, at the age of thirty-three, in October, 1866, and the doctor considered that he "dropped off very suddenly." In December of the same year she became housekeeper to a man named ROBINSON, and in June of 1867 he married her. He was a widower with five children, and she had at this time one girl, nine years of age. She lived with ROBINSON until the latter part of December, 1867, and during that year there died in his house a boy ten months old in January, a boy six years old in April, a girl of eight years in the same month, her own daughter of nine years in May, and another little girl in December. Two surgeons attended these children, and both stated that the cause of death was gastric fever. Her husband, ROBINSON, however, suspected her; he is said to have found out that she robbed him, and his relations did not scruple to tell him his children had been poisoned. She absconded from his house, and in October of 1870 we find her once more married, to a man named COTTON, living at Walbottle. Here she was accused of poisoning pigs, and became on such bad terms with her neighbours that she and her reputed husband went to live at West Auckland. The family then consisted of herself, her husband, and three stepsons. In September, 1871, her husband died, at the age of thirty-three; and in March, 1872, two of her stepsons died. In each case the death is said to have been sudden, and to have been marked by the same symptoms. After the husband's death a man named NATTRASS came to lodge with her, and in April, 1872, he also died; after suffering great agony for about a week. This left her with only one stepson, seven years old, and

he died of what the doctor at first called gastric fever in July of last year.

Sixteen deaths had thus occurred in the woman's successive households, not to mention the four in the South of England. Even in the case of the last child, after making a *post mortem* examination, the doctor gave an opinion that the death was due to natural causes, and he specified gastric fever as the fatal complaint. But, on reflection, his mind misgave him, and upon examining some of the contents of the stomach he found traces of arsenic, and communicated with the Police. The body was then fully examined, and an amount of arsenic was discovered in it sufficient to have killed an adult. Upon this the bodies of others who had recently died in the woman's house were exhumed, and arsenic was found in them. In the body of the lodger NATTRASS as much as seventeen and a half grains were detected. The only question which the prisoner's counsel could raise on her behalf was whether it was proved that the arsenic of which the child died had been administered by her. She had bought, indeed, six weeks before the child's death, a mixture of soft soap and arsenic containing as much as 300 grains of the poison. This had been used to clean a bedstead, and it was suggested that a quantity of the arsenic might have dropped on the floor and have been afterwards inhaled in the dust. There was also said to be a paper of arsenical green colour, the fumes of which might have had a poisonous effect. It was also suggested that some of the mixture might have been left in a jug from which the child might have drank. But these far-fetched suppositions could not possibly overweigh the heavy accumulation of circumstantial evidence; and the Jury, in about an hour, returned a verdict of "Guilty," and the woman was left for execution.

Now, it hardly admits of moral doubt that the crime of which she has been convicted was but one of a series, and that for years she had lived the life of a systematic poisoner. The history of other cases is so precisely similar to that of the present, that one is only surprised no doctor should have previously suspected foul play. The neighbours, as we have seen, did suspect it in the case of the children of the woman's third husband, but successive cases of "gastric fever" appear to have occurred in the woman's household without arousing any misgiving in the minds of skilled observers. That the three persons whose bodies were examined, besides that of the boy, were poisoned by arsenic seems to admit of no doubt, but their deaths were duly certified, and it was supposed, so far as medical observation went, that they died from natural causes. So far as any motive can in the instance of the West Auckland poisoner be detected, it was simply a desire to secure the small insurances which might fall due on the death of her victims. There was no hatred or passion in the case, but a sort of diabolical inhumanity which made the woman absolutely indifferent to everything except the attainment of her own paltry ends.

Yet with this example before us, we are solemnly warned to believe almost anything rather than conceive the idea that any of the Witnesses for the Prosecution would take money for their oaths, though MARY ANN COTTON committed (probably) sixteen murders for the miserable insurance money that she gained.

Gentlemen, you will now go with me to another strange part of these proceedings—I mean to the affair of DON PEDRO CASTRO: an affair tainted with dark suspicion. CASTRO was brought over specially to give conclusive evidence of the Defendant's guilt. His arrival was heralded by the newspapers as if he were the EMPEROR OF RUSSIA, or the CZAREWITCH on the Bench, who was coming to our land. The most illustrious of potentates could scarcely have landed with a louder flourish of trumpets. But after a little time it was found that he was a Witness whom it would not be convenient to produce. It was another of those episodes of a serious character which this Trial exhibits. Taken in conjunction with the strange appearance of Miss HALES, and their deadly antipathy to the dead Mother, I think it eminently suspicious. The medical man who examined CASTRO, said that he had no delusions: that he ate well and drank well. If he was spoken to, he said, "What shall I do? They will not let me alone. They bother me." Who are they? Does that indicate that there were persons about him asking him to do things that he felt he ought not to do? [Here Dr. KENEALY read the testimony of Dr. MILLS, which appears in Vol. II., *Trial*, page 24.] I do not in the least accept Mr. HAWKINS's statement that he was not in a fit condition to give evidence.

The LORD CHIEF JUSTICE: Dr. MILLS stated that he could not make him understand his questions.

Dr. KENEALY: He says that the man was in a state of melancholia. Why, our greatest poets were in that state. Lord BYRON, as his first poems testify, was in a state of chronic melancholia; but I have yet to learn that he was in a condition that would have precluded him from giving evidence. Observe what it is that CASTRO says. His words are, "They won't let me alone. They bother me," and he is said also to have spoken about GOD. Is that the language of a man who is unable to answer questions? Is it not rather the language of a man who is pressed with questions which his conscience will not allow him to answer?

Mr. TAYLOR (Juror): Had he not been in a lunatic asylum?

Dr. KENEALY: Yes. I do not remember the time, but I do not think that that is very relevant.

The LORD CHIEF JUSTICE: It is relevant to this extent. When they wrote out in 1867 to ask him to come and give evidence, his son replied that his father was in an asylum.

Mr. Justice LUSH: He had been twice there, I think.

Dr. KENEALY: I think that was hearsay.

Mr. HAWKINS: I think there was a cross-examination about it of DONNA HALEY.

Mr. Justice LUSH: He was brought over with an old friend.

A JURYMAN: He said he would not come without.

Dr. KENEALY: He appears to be in full possession of his intellect when he leaves Brazil, and when he arrives here. He has no delusions, but he utters appeals, which makes me say that people were about him who were endeavouring to persuade him to swear certain things. It seemed as if he could not recognise this man as ARTHUR ORTON, and the whole thing is as suspicious as could well be. There the matter ended with the medical man who saw him every day. He did not prove anything wrong about him. SANTANDER refused to give evidence unless his expenses were paid. He said he would make no declaration unless he was paid for it. The Lord Chief Justice said the Witness was not satisfactory, and Mr. HAWKINS then brought up Mr. PURCELL.

Mr. Justice LUSH: I find, in referring to the evidence, that he was not in an asylum twice, but what is very striking, Dr. KENEALY, is, that you cross-examined Mrs. HALEY yourself for the purpose of showing that he had been in a lunatic asylum. Why was not SANTANDER, the old friend of CASTRO, who had come over for him, called?

The JUROR: He was called, my lord, long before Dr. MILLS.

Mr. Justice LUSH: So he was; and he stated that CASTRO was very well on the voyage, but that at Liverpool something upset him.

Mr. HAWKINS: It was Defendant's Counsel who suggested he should be called.

Dr. KENEALY: SANTANDER was not called at all again on this point. He did not in any way suggest that there was anything mentally wrong in CASTRO when he was called the first time. It seems to me that in a Case of this description the Crown might have very well paid him whatever expenses he demanded.

The LORD CHIEF JUSTICE: *I suppose he was asking something very exorbitant.*

Dr. KENEALY: They have not said so. If it were so, we should have heard of it in some way. Mr. HAWKINS, I think, would have dinned it into our ears morning noon and night, as an explanation of his reasons for not calling so vital a Witness as THOMAS CASTRO. But not a syllable has been breathed upon it but by your lordship now. It seemed as if CASTRO could not recognize this man as ARTHUR ORTON. Nor does suspicion end here. SANTANDER refused to answer. The Court did not compel him, as it might. It seems as if there were a screw loose somewhere.

The LORD CHIEF JUSTICE: My reason for supposing that he demanded an exorbitant sum, is, that he made no difficulty when he was first called.

Dr. KENEALY: What I desire to point out is, that after CASTRO had been brought into the Court to see the Defendant, we have this story of his being unable to give his evidence, and his complaints that they won't let him alone.

The LORD CHIEF JUSTICE: Do I understand you, then, to argue that this man, having been taken to see the Defendant, and having refused to identify him, he was worried out of his senses by people pressing him to do so?

Dr. KENEALY: It looks like it, my lord, or at all events it makes their conduct suspicious.

The LORD CHIEF JUSTICE: *What villains you make them out to be! What scoundrels!*

Dr. KENEALY: When there is opposite swearing there must be villains on the one side or the other.

The LORD CHIEF JUSTICE: But what a fearful imputation you are casting upon the professional men engaged in the Prosecution.

Dr. KENEALY: My lord, I cast imputations upon no professional man.

The LORD CHIEF JUSTICE: But you are casting imputations upon some one.

Dr. KENEALY: When there is perjury there must be some one who gets the false Witnesses to come forward.

The LORD CHIEF JUSTICE (with great emphasis): I quite agree with you there, Dr. KENEALY. (Laughter.)

Dr. KENEALY (after a pause): I hope your lordship does not mean that all the truth is on one side?

The LORD CHIEF JUSTICE: No. But I refer to the episode which has recently passed in this Case.

Mr. Justice LUSH: I should have thought, Dr. KENEALY, that after what has passed Counsel for the Defendant would have been chary about imputing false witness to others.

Dr. KENEALY: Well, my lord, after the PITTENDREIGH Forgeries, which come up like a ghost before me——

The LORD CHIEF JUSTICE: It is quite time that that ghost was laid.

Dr. KENEALY: If the other side will revive it I am not answerable. If the LUIE episode is alluded to, I must be allowed to allude to the PITTENDREIGH Forgeries.

The LORD CHIEF JUSTICE: Very well.

Dr. KENEALY: I do not profess to be able to put my finger upon any one, and say that is the man who went to CASTRO; or who tampered with CASTRO. I cannot admit for a moment, as appears to be suggested, that all who are engaged against me, are true: and all who are with me are false.

The LORD CHIEF JUSTICE: No one could be so unreasonable as to say that.

Dr. KENEALY: But it is said, my lord: or it is suggested or insinuated. I say that, taken in its plain sense, the language of CASTRO is consistent with the view I am putting before the Jury. The Crown did not think it wise or expedient to interrogate SANTANDER, and they do not tell you that he made any exorbitant demands, or give you any good reason for not asking him a question. Mr. PURCELL, who was also called, said that CASTRO was in a hopelessly stupid state. As he was a miserable man the Court might do what they liked with him. Mr. PURCELL said he could tell nothing, and upon that my lords decided not to call CASTRO. They would not allow me to cross-examine Mr. PURCELL; consequently I was shut out from any opportunity of asking him any questions on that matter.

Mr. Justice LUSH: If you had suggested any further questions for us to ask, we should have put them to Mr. PURCELL. It was for us to determine the fitness of CASTRO for examination; Mr. PURCELL was the Witness of the Court, and we were quite satisfied.

The LORD CHIEF JUSTICE: I cannot imagine any better evidence as to the Witness's incapacity to give evidence than an examination by a medical man, and afterwards an attempt to elicit answers to questions put to him by Mr. PURCELL, who is a highly intelligent barrister, and who understands what evidence is.

Dr. KENEALY: What I quarrel with is, that there was nothing but a general opinion of Mr. PURCELL's on the matter that CASTRO was not fit to be examined. I consider that was not enough for the Court to act upon.

The LORD CHIEF JUSTICE: At any rate, it was not the doing of the Prosecution. The Court acted upon its own view.

Dr. KENEALY: No doubt, my lord, it did. Yet I should have thought there was a case in point which would have weighed upon the Court before it took the course it did.

The LORD CHIEF JUSTICE: What Case is that?

Dr. KENEALY: The Case of DONELLY, which I find reported as follows, in *R.* v. *Hill* (2. Den. and P.C.C. 254), decided by the Court of Common Appeal. The accused, who was attendant of a ward in a lunatic asylum, was indicted for the manslaughter of one of the patients under his care. At the Trial before COLERIDGE and CRESSWELL, J.J., at the Central Criminal Court, it being opened by the Prosecution that a Witness of the name of DONELLY would be called, who was a patient in the same ward with the deceased, evidence was gone into on both sides, in order to found and meet the objection to his competency. A Witness stated that DONELLY laboured under the delusion that he had a number of spirits about him continually talking to him, but that that was his only delusion: and two medical Witnesses deposed that he was rational on all points not connected with it; while one added that he was quite capable of giving an account of any transaction that happened before his eyes. DONELLY *was then called; and before being sworn, was examined by the Prisoner's Counsel.* He said, "I am fully aware that I have a spirit, and 20,000 of them—they are not all mine; I must enquire; I can where I am. I know which are mine. Those ascend from my stomach to my head, and also those in my ears. I do not know how many they are. The flesh creates spirits by the palpitation of the nerves and the 'rheumatics'; all are now in my body, and around my head—they speak to me incessantly, particularly at night. That spirits are immortal, I am taught by my religion from my childhood, no matter how faith goes, all live after my death, those that belong to me, and those which do not. SATAN lives after my death, so does the Living GOD." After more of this kind, he added, "They speak to me constantly, *they are now speaking to me*; they are not separate from me now. But I can't be a spirit for I am flesh and blood; they can go in and go out through walls and places which I cannot. I go to the grave; they live hereafter—unless, indeed. I have a gift different from my father and my mother, that I do not know. After death my spirit will ascend to Heaven, or remain in Purgatory. I can prove Purgatory. I am a Roman Catholic; I attended Moorfields, Chelsea Chapel, and many other Chapels round London. I believe Purgatory. I was taught that in my childhood and infancy. I know what it is to take an oath; my catechism taught me from my infancy what it is lawful to swear; it is when GOD'S honour, our own, or our neighbours' good requires it. When a man swears he does it, in justifying his neighbour, on a prayer-book, or obligation. My ability evades while I am speaking: for the spirit ascends to my head; when I swear, I appeal to the Almighty; it is perjury, the breaking a lawful oath, or taking an unlawful one: he that does it will go to Hell for all eternity." He was then sworn; and says the report, *gave a perfectly connected and rational account of a transaction which he reported himself to have witnessed.* He was in some doubt as to the day of the week on which it took place; and on cross-examination said, "These creatures insist upon it, it was Tuesday night, and I think it was Monday." Whereupon he was asked, "Is what you have told us what the spirits told you, *or what you recollect without the spirits?*" And he said, "No; *the spirits assist me in speaking of the date.* I thought it was Monday; and they told me it was Christmas Eve (Tuesday), but I was an eye-Witness, an ocular Witness, &c." *The Court received his evidence;* reserving the question of his competency for the Court of Criminal Appeal. The accused having been convicted, the Case was argued before Lord CAMPBELL, C.J., COLERIDGE and TALFOURD, J.J., and ALDERSON and PLATT, B.B., when the Counsel for the prisoner contended that DONELLY was *non compos mentis* but was a lunatic within the legal definition of the term, and that as soon as any unsoundness of mind is manifested in a Witness he ought to be rejected as incompetent, citing, *inter alia*, COM. DIG. *Testmoigne*, A. 1. The Court, however, without hearing Counsel on the other side, unanimously upheld the conviction. Lord CAMPBELL, in delivering his Judgment, said: "The question is important, and has not yet been solemnly decided after argument. But I have no doubt that the rule was properly laid down by PARKE B., in the Case that was tried before him, and that it is for the Judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanction of an oath; and then the Jury are to decide on the credibility and weight of his evidence. As to the authorities that have been cited, the question is, in what sense the term *compos mentis* was there used? A man may in one sense be *non compos*, and yet be aware of the nature and sanction of an oath. In the particular Case before the Court, I think that the Judge was right in admitting the Witness. I should have certainly done so myself. . . . . It has been argued that any particular delusion, commonly called monomania, makes a man inadmissible. This would be extremely inconvenient in many cases in the proof either of guilt or innocence: it might also cause serious difficulties in the management of Lunatic asylums. I am therefore of opinion that *the Judge must in all such cases determine the competency, and the Jury the credibility. Before he is sworn, the insane person may be cross-examined,* and Witnessess called to prove circumstances which might show him to be inadmissible; but in the absence of such proof, he is *prima facie* admissible; and the Jury must attach what weight they think fit to his testimony." TALFOURD J. observed it would be very disastrous if mere delusions were held to exclude a Witness. Some of the greatest and wisest of men have had particular delusions. Lord CAMPBELL added, "The rule which has been contended for, would have excluded the testimony of SOCRATES, for he had one spirit always prompting him."

The LORD CHIEF JUSTICE: *That case does not apply!*

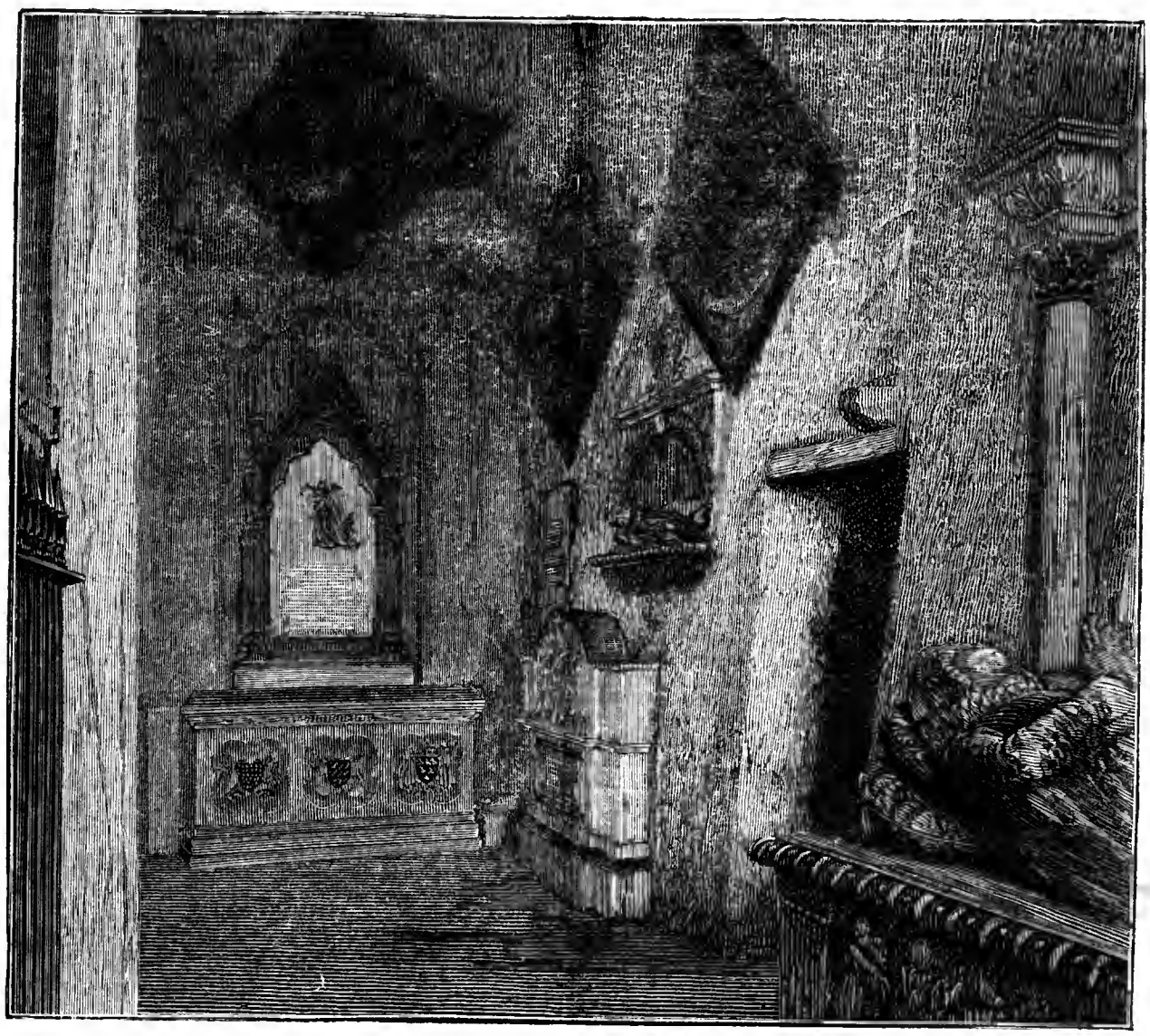
[Their lordships rose at ten minutes past four o'clock.]

HOW THEY MADE THE CLAIMANT ARTHUR ORTON.

It was at the funeral of the Dowager Lady TICHBORNE at Tichborne Park, in the year 1868, that we first heard of the name of ORTON. I was present at that funeral in company with Mr. SCOTT, of Rotherfield Park, and Colonel LUSHINGTON with many other gentlemen of the County. The TICHBORNE family were represented by Mr. ALFRED SEYMOUR, M. P., Mr. HIGGINS alias "JACOB OMNIUM," Colonel WILLIAM GREENWOOD, and Lord ARUNDEL. The chapel was crowded, and the people from Alresford out of respect to the deceased came in vast numbers after the service was over. Poor Sir ROGER was so overwhelmed with grief, and so blinded with tears, that he could not get up from his seat. I can never forget the manner in which that poor man sobbed and cried on that sad occasion. I helped him up, and when he had recovered himself he immediately took the place of chief mourner, a place occupied by Mr. SEYMOUR, M.P., who in the most vulgar manner had pushed forward to prevent Sir ROGER from being next to the body of his own mother. Sir ROGER, seeing Mr. SEYMOUR in the place he ought not to be in, gently gave him a lift to get him out of the way. The effect was, as might be expected when 20 stone are brought against 10, to send Mr. SEYMOUR gasping to the wall, upon which the whole of the TICHBORNE family left the chapel in a body together, going by themselves across the Park to the church.

Just as we were leaving the chapel a rush was made for the doors by the great crowd, and "JACOB OMNIUM," who has a head and shoulders taller than the rest, finding he was squeezed, raised his hands up in the air with a heavy stick in one of them. The people, thinking he was about to strike, cried out, "If you do, into the moat you go!" "throw him in!" The moat was within ten paces of the Chapel door, some ten feet deep. Sir ROGER having assumed his right place as chief mourner to his beloved mother, I joined him, and we proceeded to the Parish Church, where he found the members of the family who had arrived before us, headed by that self-same Mr. ALFRED SEYMOUR,

who expressed to me in the lobby of the House of Commons "that his Sister might be grilling in hell for all that he cared" —a saying which when on his oath he swore he did not recollect! as if a brother could ever forget expressing such a diabolical wish with reference to his own sister. The service lasted a considerable time. The church was crammed with the old tenants and old servants of the Family who recognised in the person of the Claimant their long lost master. The Tichborne Family Vault is of great antiquity, and worth seeing. On several occasions when it has been opened, the air has been found so bad that it has caused almost fatal effects to the workmen engaged in the task of preparing it. Being almost a show place, many scrambled down to see it, and at last Sir ROGER TICHBORNE expressed a wish to take the last farewell of his devoted Mother. Upon descending into the vault he knelt down overwhelmed with grief, and the crowd had the good taste to leave him alone and come away, all but one woman, who remained and stared him out of countenance to the last. On coming up again the first thing he said to me was: "ONSLOW, who was that horrid woman who would not leave me alone when I was taking my last farewell of my poor Mother?" I said I did not know who she was, she was a stranger to me. Sir ROGER and myself and Mr. SCOTT remained in the church for some considerable time, say quite half-an-hour, when we adjourned to breakfast at Tichborne



THE FAMILY VAULT AT TICHBORNE.

House. On crossing the foot-bridge we observed this strange woman in company with a short, vulgar, pock-marked man, and as soon as he crossed the bridge she appeared to cause a great commotion, so much so, that I immediately called Mr. CALLOW the saddler of Alresford to me who was standing by, to ask what it all meant? He informed me, in reply to my question that her name was MARY ANNE LODER, of Wapping, and that she was brought there (that is to the foot-bridge) to catch a glimpse of the Claimant *for the first time*, and seeing him and recognising him as her old lover ARTHUR ORTON, she had forced herself to faint in the arms of the Detective WHICHER, a fact which caused us all to laugh much. But when we were told that her fainting-fit was caused by the sight of her old lover, ARTHUR ORTON, *for the first time* since 1851, I immediately asked how was it she did not faint away in the tomb, where she remained so long? And from that hour I saw through the dodge and scheme of the enemy to make Sir ROGER, ARTHUR ORTON; from that hour the conspiracy was concocted; and might, money, power, and the aristocracy have triumphed for a season over *right* and *justice*. The day is, however, fast approaching when I trust this gigantic conspiracy will be detected and exposed, and an innocent and ill-used man placed in possession of his title and estates, and right and justice once more in the ascendant.

GUILDFORD ONSLOW.

ONE HUNDRED AND FORTIETH DAY.—FRIDAY, DECEMBER 12th, 1873.

Dr. KENEALY: May it please your lordship: Gentlemen of the Jury. The conduct of CASTRO after coming to this country specially to give evidence, and then giving none, can only be explained, in the view which I take of it, either by his having done something in the past which he regretted; or by his having been asked to do something in the present from which his conscience revolted. The first intimation which CASTRO had that he would be required in this matter, was conveyed to him in the Defendant's letter of the 28th of August, 1867, in which he stated that it was his good fortune and great happiness to have his Mother still alive, and to possess many good friends who, like her, assisted him. In spite, however, of all that, he added, "those beautiful estates that I used to tell you of are kept from me until I prove that I am the same person I was thirteen years ago." Gentlemen, I ask you whether it is at all likely that a poor, wretched, slobbering butcher's boy, such as ARTHUR ORTON must have been, would have ventured to talk as the Defendant had done to the CASTROS of the splendid estates which he claimed? Would not his very appearance, which was that of a mere runaway sailor-lad, have covered him with ridicule? Yet the Defendant does not hesitate to remind CASTRO of those conversations in reference to his estates, and he mentions the names of various persons with whom he became acquainted during his stay at Melipilla. Mr. HAWKINS, commenting on this, said that ROGER TICHBORNE could speak only French and English, and that during his brief stay of ten days he could not have become acquainted and conversed with all the Spaniards whom he names. But he forgot, or he did not know, that in those southern lands acquaintance springs up more rapidly than with us in colder climes, and it is delusive to say that he did not know sufficient Spanish to enable him to carry on a conversation in that language. In a letter to Lady DOUGHTY, he stated that, "during the voyage I took to reading and studying Spanish, which will be very useful to me in my travels." With his knowledge of French he would not have much difficulty in learning and retaining quite enough of the Spanish language to enable him to converse with ease, and it is a kind of *lingua franca*, not pure Spanish, which I think prevails there. Besides, he was some months in South America before he went to Melipilla.

The LORD CHIEF JUSTICE: I thought he went there immediately after his landing.

Dr. KENEALY: The suggestion of the other side is, that he never went there at all.

The LORD CHIEF JUSTICE: Yes, but according to your theory he must have gone there first.

Dr. KENEALY: Whether he went there first or last, he had studied Spanish on his voyage out. I found, too, from his letters that in the boat in which he went up the river there were two Indians, who, I suppose, spoke nothing but Spanish.

The LORD CHIEF JUSTICE: *He had his French servant with him, who might have interpreted all that was said!*

Dr. KENEALY: In the Defendant's letter to CASTRO, he mentions the name of DON CARLOS ANSELMO. Mr. HAWKINS stated to you, Gentlemen, that no such person existed! And yet in DON PEDRO CASTRO's letter to the Defendant, in reply, he says, "I have written to DON CARLOS ANSELMO, to furnish the date you require at my father's hands." It is strange—is it not?—that with such a letter in his hands, Mr. HAWKINS could have made such a counter statement. But everything is strange in this Trial.

Gentlemen, you will be told that he never mentions Melipilla in any of his letters home. Of what consequence can that be, when we bear in mind the secretiveness of the man? The whole of his life is a mystery of mysteries; so is his conduct as a rule. He may have had reasons for concealing the fact of his journey to Melipilla from his correspondents at home. Heaven knows, with or without reason, he wrapped up many things in night that all the world might have witnessed.

Gentlemen, about this time a person named Don CEVERO BARRA, who, of course, was what is called a "respectable solicitor," was employed as an agent against the Defendant by his family: and it is odd that CEVERO BARRA should have at once put himself in communication with CASTRO, who wrote to the Defendant, under the date February 26, 1866, thus:—

"An agent has come over to Melipilla on behalf of your opponent. His name is CEVERO BARRA. His first step was to seek out your certificate of baptism, because some one told him you had been baptized there by the Presbyter, Don FERNANDO BARRALES. He could not, however, find it; but I know he had interviews with that gentleman, with Dona CLARA DE HAYLEY, and Dona FRANCISCA AHUMADA."

This looking for a certificate of baptism indicates that this agent was imposed on: but *why* is not equally clear. He has been described as a respectable solicitor; but it has been impossible to fathom the tricks of Detectives and such like people, and if even a respectable solicitor employs them he must expect to be deceived. The letter then goes on:—

"He afterwards called on us, in order that I should show him and give him copies of the letters you had written to me, telling me he had instructions to place at my disposal a money remittance and offer me a berth in Valparaiso."

It seems to be not exactly the conduct of a highly respectable solicitor to offer bribes to get evidence from the adverse side. Unfortunately, these money remittances and offers of "berths" and bribes are in this Case all on one side. You have never heard of any such thing as payment to one single Witness called for the Defence. The letter then proceeds:—

"He did not obtain his object. On the occasion of another journey he made to Melipilla, and having recently received the first letter from you intended for my father, and believing him your agent, I showed him the said letter."

How he came to do that I cannot imagine, because he had stated him to be the agent for the other side. I really do not pretend to understand the whole of this CASTRO correspondence. It seems a deep and unfathomable mystery.

"BARRA endeavoured to make you out to be an impostor."

Here we find that this Valparaiso Agent of the Prosecution adopts the same tactics as Mr. BOWKER, who, in writing to the old comrades of ROGER TICHBORNE, invariably treats him as an impostor. But BARRA is a "respectable solicitor"—so we must not speak against him. Indeed, it is common in this Case, if ever a syllable is even hinted against a solicitor, at once to receive warning: sometimes even rebuffs and reproach. So I will not utter a word against BARRA. Indeed, his conduct speaks sufficiently for itself; and it is so "respectable" that no further need be said. BARRA, like MACKENZIE, sailed under false colours. MACKENZIE told Mrs. MACALISTER that he was employed by the Lord Chancellor to take evidence in the Case, (*Trial*, Vol. III. p 126), and BARRA was not a whit more scrupulous. But they belong to "an honorable profession," so we must be silent.

Yet I cannot pass away from CEVERO BARRA, however desirable it might be, without reminding you of the following, which appears in the cross-examination, pp. 1224, 1225:—

"Did you, when in Chili, stay at the house of CASTRO?—Yes.

"Did you, as ARTHUR ORTON, stay there for several months?—No, not a day, certainly, in that name.

"Now I will read you the answer:—

"'Melipilla, 29th February, 1868.

"'Sir ROGER C. D. TICHBORNE, London.

"'ESTEEMED SIR,—I have in my possession your favour of the 1st January of the current year, which you have been good enough to write to me in reply to mine of the 29th of October last year. An agent has come over to Melipilla on behalf of your opponent. His name is CEVERO BARRA. His first step was to seek out your certificate of baptism, because someone told him you had been baptized there by the Presbyter, DON FERNANDO BARRALES. He could not find it; but I know he had interviews with that gentleman, with Dona CLARA NORIES DE HAYLEY, and Dona FRANCISCA AHUMADA. He afterwards called on us, in order that I should show him and give him copies of the letters you had written to me, telling me that he had instructions to place at my disposal a money remittance, and offer me a berth in Valparaiso. He did not attain his object. On the occasion of another journey which he made to Melipilla, I having recently received the first letter from you intended for my father, and believing him your agent, I showed him the said letter. BARRA endeavoured to make out that you were an impostor; that Mr. ARTHUR ORTON, who was staying here, was the son of a London butcher, whose father had sent him to sea in order that he might by means of a sea voyage cure himself of a disease in the head called saubits; that in the year 1853 he returned to England, whence he came back to America; that Sir ROGER C. D. TICHBORNE, finding himself, in the year 1852, in a certain part of England in command of his regiment, threw it up, and likewise came over to America; that after travelling about, he embarked at Rio de Janeiro on his return to England, on board a vessel that was wrecked before reaching her destination; that on board this vessel there happened to be Mr. ARTHUR, likewise shipped as a passenger; that he made his acquaintance, and got possession of his papers, and that Mr. ARTHUR then went to Australia to await there the death of Sir ROGER TICHBORNE'S father, in order to present himself in England and claim the inheritance. Bring all this to the knowledge of your worthy Defender. This story of your being the son of a butcher (*carnicero*) in London springs from the fact, probably, of your wishing to say that your father was Chancellor (*canciller*) of the Queen, and that, being ignorant of Spanish, you having scarcely then begun to speak it, having recently arrived here, you said he was a butcher (*carnicier*). I shall be very pleased to possess your portrait. I send you a quarter of the lock of hair which the Senora AHUMADA has of yours.—Saluting you kindly, I beg to subscribe myself your devoted servant,

"'PEDRO A CASTRO.'

"What age was PEDRO when you were there?—He was a boy of seven or eight.

"The SOLICITOR-GENERAL: You remember the letter addressed by Don PEDRO to Mr. HOLMES, in which he stated that the Don FRANCISCA AHUMADA retained a lock of your hair, and wherein

he stated, 'I recall this fact to your attention in case of your being able to turn it to account.' Have you since that time altered the colour of your hair?—No.

"Nor since the commencement of this Trial?—Certainly not. Mr. ATTWELL is my hairdresser, and he attends me every morning. I should like to know why you ask that question.

"The SOLICITOR-GENERAL: You shall see presently. Now I will read you Mr. HOLMES'S reply to Don PEDRO, the letter being dated 1st May, 1868:—

"DEAR SIR,—I am extremely obliged to you for your letter of the 29th February last, which reached me in due course, as also by the same mail one for Sir ROGER TICHBORNE. Sir ROGER is writing you by this post, and sending you his photographic portrait, which was taken in Paris last year, very shortly after his arrival. The lock of hair which you were good enough to enclose to Sir ROGER is of considerable importance, because it is identically the same as his hair at this moment. You mention that Don CEVERO BARRA, the agent of the adverse party, has endeavoured to produce the impression that Sir ROGER was the same person as Mr. ARTHUR HORTON. I cannot completely and clearly make out from your letters whether you yourself or any of your family or friends personally knew ARTHUR HORTON. Be good enough to inform me particularly by your next letter whether you or they really did know ARTHUR HORTON or not, or whether in point of fact his name was not first mentioned to you and your friends by Don CEVERO BARRA. It is really important that you should inform me precisely upon this point. The opposing party here have been making inquiries with respect to a person named ARTHUR HORTON, son of a butcher, who knew Sir ROGER in Australia, and I have evidence on the part of HORTON'S sisters that Sir ROGER is in no way connected with them, and had never seen him until very recently. I have also the clearest evidence that ARTHUR HORTON and Sir ROGER are two distinct persons, and that they were known together in the same town, and that HORTON is at this moment in the western part of Australia. I have sent for him to come over to England. The endeavour on the part of Sir ROGER'S opponents to confound him with ARTHUR HORTON is simply a bit of chicanery; for they do not fight honourably in any of their proceedings. Unhappily, Sir ROGER'S mother, the Dowager Lady TICHBORNE, died suddenly on the 12th March last, and, in consequence, he is deprived of all resources until he obtains possession of his estate. This is only a question of time. He has, however, at his back a large number of good and influential friends, who sympathise with him in the wicked opposition he has met with, and who will not allow him to go to the wall. I send you by book-post printed copies of some of the affidavits I have filed on behalf of Sir ROGER to prove his identity. These and others, to the number of more than 100 Witnesses, are irresistible, and in the end the justness of his rights must triumph. Renewing my thanks for the trouble and attentive consideration you have bestowed on this matter, I am, dear sir, &c.,

"'JOHN HOLMES.'"

Gentlemen, it is in this letter that PEDRO CASTRO sends the Defendant a portion of a lock of hair which had been handed over to him for that purpose by the Senora AHUMADA. You will remember that that was the lady who had been in personal communication with Don CEVERO BARRA, the agent for the opponents of the Defendant; and why she should be so exceedingly kind as to send him over that lock of hair, or what the object of it was, I don't know. But we find the Defendant writing the following letter in reply to Don PEDRO CASTRO. Mr. HAWKINS is surprised why people out in Spain make so many intimate acquaintances in such a short time, but you will find in this letter that he addresses a young man whom he never saw in his life as "my dear friend." Whether that is the Spanish way of conveying a compliment by the writer I do not say. This is the letter:—

"Alresford, April 29, 1868.

"MY DEAR FRIEND,—I received your affectionate letter, dated the 29th February. I was not surprised to learn that the agents of the other side had called upon you, inasmuch as they are capable of anything base and underhand; in Australia also they have had their agents endeavouring to do the same. I have received the hair all safe, a thousand thanks. Give also my sincere thanks and respects to the Senora DE AHUMADA, and tell her that she has done me a very great service by preserving this lock of hair. I regret exceedingly to have to inform you that since I wrote you last I have suffered the loss of my dear Mother, and that if it had not been for the friends I knew before leaving England I should have found myself without any money. I am ready for my Cause to be brought forward and decided by a Jury of my countrymen, but the other side are always asking for more time in the hope that I shall die. I have affidavits from more than one hundred persons, who declare upon oath that I am the same person they knew before I left England. Amongst them are seven of my brother officers, two colonels, two majors, and three captains, and more than 20 petty officers, all the Tichborne tenants, and a good many of the gentry of the country round. I trust, my dear friend, that you will not allow the falsehood of Don CEVERO BARRA to have any effect upon you—the truth must, and in the end will, come out. When I was in Melipilla I wrote a letter to Dona TORO, the wife of JOSE MARIA TORO, to enquire for particulars of the house of Don BENSENTA LOPEZ; if you could obtain that letter and send it to me, you would do me a great service—it was written in French. The lady to whom I refer is the same who gave me letters of introduction for Buenos Ayres. With kind remembrances to all my old friends, I remain yours affectionately, "R. C. D. TICHBORNE.

"The SOLICITOR-GENERAL: As the lock of hair has been mentioned, you may just as well produce it now.—No answer.

"Mr. Serjeant BALLANTINE: See if you can find the lock, Sir ROGER?—I didn't know you were asking me about it. I have not got it.

"Mr. HOLMES produced a lock of hair enclosed in a letter, and the Solicitor-General at the same time handed in another lock, sealed in an envelope, which the Chief Justice opened and handed to the Jury.

"The two lots of hair, it was explained, formed the lock that was in the possession of the Senora AHUMADA, one portion having been sent to the Claimant and the other given to the Chilian Commission.

"The SOLICITOR-GENERAL: Is this lock of hair, produced by Mr. HOLMES, your hair?—I can't say, I am sure.

"Look at it?—How can I tell by looking at it? (The hair was handed to the Claimant.)

"Is that your hair?—I don't think it is.

"Is that the hair about which you told Don PEDRO CASTRO to thank the Senora DE AHUMADA a thousand times?—Yes, but I think some explanation is necessary here. I gave Mr. HOLMES authority to receive my letters, and I remember that on one occasion he came to my house with a translation, and said, 'Do you remember a young lady in Chili cutting off a lock of your hair?' I replied, 'No.' He said, 'Nonsense; somebody cut a lock off. Here is a letter.' I was not certain whether anybody had or not, and the letter which I wrote back was a letter which he (Mr. HOLMES) partly dictated to me.

"The SOLICITOR-GENERAL: Was it true that you wrote to the Senora, asking her to send you a small portion of the lock?—Yes, but that was at the dictation of Mr. HOLMES.

"Who was that lady?—I have no recollection of knowing her.

"Do you mean to say she did not cut off a lock of your hair?—Yes.

"Then why did you write to her to persuade her to send you a small portion of the lock?—Because I was persuaded by Mr. HOLMES, and I thought it was possible someone might have cut off a lock without my knowing it.

"Then you wrote that letter at the instigation of your attorney whilst you at the same time believed that no hair had been cut off. You did that in order that you might obtain the hair to show to other persons, so as to deceive them?—Not in the least.

"For what purpose, then, did you want the hair?—For what purpose?

"Yes?—Why, to have a look at it. (Laughter.)

"But you wrote telling the Senora that she had done you good service by retaining the lock?—I was not aware the hair was mine, but I thought it possible that any one might, at some time or other, have cut off a lock from my head unknown to me.

"What was the meaning of the words that 'she had done you great service by preserving the lock of hair'?—I don't know what it meant then. I found out after I read the evidence that that hair was not mine.

"You found that it had been cut from the head of ARTHUR ORTON?—I did.

"Did you ever suggest to anyone that it was your hair?—No; I did not. I told Mr. HOLMES that it was not my hair.

"Did you ever suggest to any one that it was not your hair?—Yes; I told Mr. SPOFFORTH and Mr. BAIGENT.

"After the Chilian Commission?—Yes.

"Did you ever suggest a doubt about it before?—I don't see how I could, because I was not certain about it.

"Did not Mr. HOLMES compare the hair with yours?—Yes, he did.

"Before he wrote the letter in May, 1868?—Yes, I believe he did.

"Did he not say that the lock of hair was of considerable importance, because it was identically the same as your own?—I believe he did.

"Did he take a piece of your hair off to compare it?—No; I think not.

"Did you compare it in the glass?—I dare say we did.

"Do you mean to say that before you wrote that letter you did not take the trouble to see whether that hair was like your own?—I don't believe I did.

"Now, just look at it yourself. (The lock of hair sent by the Chilian Commission was handed to the Claimant.) Now, in your judgment, is not that like your hair now?—No; I think not; it's finer hair than mine.

"But did you think it was like yours when the letter was written?—I don't think I took any notice of it.

"Did you not say it was not like your hair in colour at the present moment?—I don't know what you are talking about. You have got me into confusion somewhere.

"You do yourself a great injustice by saying you are confused. Did you or did you not form any judgment on its being like your then hair?—I can't say.

"What made you write to say the Senora had done you a great service?—Because Mr. HOLMES told me.

"What great service do you suppose she had done you?—By sending me the hair, I suppose. I don't know, however, that she had done me any great service. The letters were more or less other people's than mine.

"But you yourself wrote saying she had done you a great service?—Well, it would have been more proper if I had written, 'You might do me a service.' I told Mr. HOLMES that nobody had ever, to my recollection, cut a curl off my hair.

"Then, when the letter was dictated, Mr. HOLMES knew that no hair had been cut off?—I should say so.

"But he stated that the lock was identically the same as your hair. Did Mr. HOLMES know at that time that no hair had been cut?—Certainly; he knew in the first instance, when the letter was written. I had told him that no person had cut my hair.

"The Jury asked to be informed what year the hair was taken off.

"Mr. Serjeant BALLANTINE: There is a dispute about that.

"The SOLICITOR-GENERAL: Had you a doubt about its being your hair when you wrote the letter?—Well, I did not think of it at the time. I had been told before the hair arrived that it was like mine, and I thought it probable that someone might have cut it off.

"Look at the letter and see how it is spelt. Surely you will not say that Mr. HOLMES dictated that?—(The Claimant examined the letter.)

"Having seen the letter, is there anything you want to say in explanation?—Nothing whatever, other than what I have said.

"Did you not make use of the passage respecting your hair in your affidavits in Chancery?—I don't deny it.

"And you mean to say that at the time you made these affidavits you knew that nobody had cut off your hair?

"Mr. Serjeant BALLANTINE: He has not said that.

"The CLAIMANT: I should like to know what affidavits you are speaking about.

"The SOLICITOR-GENERAL: I mean the one dated 7th April, 1863. Do you mean to say that at that time you had told Mr. HOLMES that no one had cut your hair off?—I had told him previously. I said that if it was cut off, such a thing was unknown to me."

Gentlemen, I have never seen this lock of hair, and I should like to look at it now.

[*It was handed to* Dr. KENEALY *by* Mr. DAVIS: *It was curled, light auburn, or red, and might have been the Lord Chief Justice's own, so like his it was. It bore no resemblance in any way to the hair of the Defendant.*]

Gentlemen, whether this particular lock of hair was sent over to England in order to entrap the Defendant in some form, I cannot say. I do not profess to be acquainted with all the arts of subtlety and strategy. Many nets have been spun by the spiders to catch this fly; and this may have been one. You must decide. In the letter written to Don PEDRO CASTRO by Mr. HOLMES, who is also a "respectable solicitor," we read, "The lock of hair is of considerable importance, *because it is identically the same as his hair at this moment.*" Gentlemen, here again I am lost. I wander in a labyrinth. You see the hair, you see the Defendant. The one is reddish and curled, the other is dark and straight. There is not a trace of resemblance or identity. The two hairs were never in the least alike. We have HODSON'S evidence as to the colour of the hair in 1866; he says it was then as dark as now. We have a portion of the hair of the undoubted ROGER cut by Lady TICHBORNE, his Mother, in 1852. This last the Defendant and Mr. HOLMES must have seen; yet the Defendant thanks CASTRO for the hair, and HOLMES says that it is "identically the same," though this is red; and they knew that ROGER'S was dark. The whole of this is a riddle. I can neither understand nor explain it. I seem surrounded by riddles. I am in a network of webs, and the more I endeavour to extricate myself the more I am entangled. The complications of Father RODIN in 'The Wandering Jew' are simplicity itself when compared with those in this Case.*

It would be a curious question whether Lady TICHBORNE, the Mother, ever saw this precious relique of her Son ROGER. From the rapture into which the Defendant fell, when this scarlet memorial of himself was sent from South America, I can fancy him hastening to present it to his mother. Did they offer up prayers to Heaven for its preseveration? She knew that her son had never been red-haired. Did she recognize some miracle in this? Forgive me for this irony. Do you really think that this was the hair which the Defendant saw? Was he not shewn something else? Who knows? Lady TICHBORNE must have been mad indeed, if she accepted this fox-like curl, as being that of her son. As long as they could prove her "crazed" you might think anything. But have they not virtually abandoned that? And was not their attempt a sort of PITTENDREIGH Forgery?

Gentlemen, the theory of Lady TICHBORNE being crazed having been exploded, we shall be told, I suppose, that she was in many things,—perhaps in this of the red hair,—the victim of her own credulity; that having made up her mind that her son was saved and alive, she construed all things in favour of this Defendant; and adopted him without just reason. May I ask what this is not in effect reviving the old charge of "craze" under a new and artful phantasm? or falling back upon the other plea, of which I thought they had grown ashamed, namely, that she had knowingly accepted an Impostor? The sound and admirable judgment which she always exhibited, and her extreme caution in her letters to Australia, negative the first notion, which has nothing to support it but the evidence of the priests, of CHATILLON, and one or two more, who are unquestionably wrong, and who are not to be trusted in this Case where passion and interest are so largely engaged; while the second supposition is so monstrous that they are obliged to wrap it up in clouds; and yet it is involved in the sophism which they may probably put forth to lead your reason from the truth.

How much this mother feared the Family, and their machinations against her son; how anxiously she felt, lest those in England should get the least inkling of his being discovered; how instinctively, as it were, she anticipated evil designs, can be learned from her letter to CUBITT, of Feb. 15th, 1866. I would to Heaven that she had been here to tell us why. From her own lips we should then have heard why she distrusted those loving relatives, and affectionate friends, who were only longing to behold their long lost ROGER, and to take him to their hearts with rapture. Or, we might have heard reasons, and good ones, why this fond mother had no faith in their loving kindness. You see in that letter, that she distrusts even BOGLE, and fancies that the moment he hears her son has been discovered, he, as the humble friend of the DOUGHTY and ARUNDELL interest, will take the side of those whose hostility she dreads. And yet we hear, until we are sickened by the thrice-told tale, that he had only to show himself and he would be welcomed by all the tribe.

This poor lady from the first felt a morbid terror lest his discovery should become known to any of his relatives—so that they might trace him out. She mentioned, indeed, the fact: but I do not remember that she told them where he was. In one of her letters (27th August) to GIBBES, she writes thus: "I would have sent him £20 to-day, *but as I cannot say his real name*, and I do not know the other, I could not send it straight to him: therefore I send it to you." Thus you see, she would not communicate, even to her own banker, that the long lost son was found. Why was all this secrecy necessary, if there were such a fund of love in store for him by his relatives and connections?

I sometimes ask myself, Had this poor lady heard of the seduction? Did she know the *real* reasons—all the reasons which induced her son to abandon England? Did she learn the fierce hostility of the ARUNDELLS of Wardour, because of this affair? All these things we should have heard, had she lived. It is clear there is a mystery. There is something in the background—some dim and fearful Rembrandt-like darkness, through which I fear we shall never find our way. Why all this morbid terror of the Family? Why this overwhelming dread of those loved and loving relations? Had they vowed vengeance upon him for the deed? Had they threatened his life? Heaven knows. There seems to be a NEMESIS upon this man—probably for his deeds. A curse like that of ORESTES seems to pursue him.

This astounding act, this welcome of the red-haired stranger, you must take as not the only proof of the utter carelessness of the Defendant about his Case; and the negligence, or incapacity, or whatever it may be, of those who profess to watch his interests at Poet's Corner. But this is not all. It is certain that ORTON, in addition to being vermillion-haired, had a scar on his face. Equally certain is it that no one told me of the fact during the Case for the Prosecution. What is this consistent with? Guilt or Innocence? Surely not Guilt, which is ever wary and watchful. It may have originated from worse motives.* You will understand what I mean. I am loth to impute actual treachery. But the fact remains that I never heard of it: and this Case has thus been unduly prolonged by the opportunity which my want of knowledge afforded to the Prosecution of calling back that woman LODER, and some others, to rebut it. I invite you to view this, as proof that this gentleman is not the artful plotter that he has been called.

Gentlemen, all these things make me ask you whether there must not have been something more than usual pressing upon the mind of Don PEDRO CASTRO, which prevented him from being brought forward as a Witness against the Defendant when he had journeyed hither at so great cost? I shall always lament that he was not called. I shall always regret that *you* did not see him in the witness-box, and form your own opinion whether he was sane or not. It was not my act, I thank God, which kept him from you. You, or some of you, must have seen him frequently in this Court, before it was discovered that he was insane. It was impossible not to notice that marked Spanish face: and once seen, you would necessarily enquire as to the man. Well! did any of you observe the least thing wrong about Don PEDRO CASTRO? Did he not look on, and observe, and behave in every way like a man in perfect possession of all his faculties? However, he has not come before you: and there is evidence of a curious sort. But my lords say that they, and they alone, are

* This lock of hair helped to ruin the Defendant, as it substantiated the theory that his hair was really red, like ORTON'S; but that he dyed it dark every day. Now in prison, where he can get no dye, it remains unchanged, and is of the deep dark brown which ROGER'S hair was. Can it be that the red lock of hair was substituted for the one really sent home? This would explain the Defendant's gratitude; otherwise it reads simply as the act of one insane.

* Poet's Corner was in truth a hot-bed of treachery.

responsible; and so I say no more.* You must form your own opinion from what you knew first; whether Mr. HOLMES fell into a trap that was laid for him, or whether he baited the trap for himself, and secondly, whether Don PEDRO CASTRO is in his right senses or not.

Gentlemen, I have one or two remarks upon the Melipilla map. It is a great pity that any map should have been produced in this Case which was not perfectly authentic. Notwithstanding the challenge which I gave, it was not taken up by Mr. HAWKINS, and he has not thought fit to *prove* his maps after all. You must not therefore assume that they were correct; and you must dismiss any impression that you may have formed from them. I mention this, because I ought to point out to you everything that I remember of a suspicious nature in the course taken by the Prosecution. I may be called a person of a suspicious temper; but when I have pointed out these things, I shall have relieved my conscience, and done my duty. I see so much here that is tainted with suspicion, that I must direct your judgment to them. I may be asked—for I am asked a great many things—if I charge the authorities at the Treasury in this matter? I charge no one individually with these things. What I say is, that I challenged the maps; and that they did not prove them; and that therefore *you* must not put boundless faith in them, as if they were genuine. That is all I say.

Mr. Justice LUSH: Is the map you refer to, the map of Australia?

Dr. KENEALY: Yes, my lord.

Mr. Justice LUSH: It is a map published by Mr. WYLD for the use of schools. *Do you suggest that* Mr. WYLD *fraudulently concocted that map?*

Dr. KENEALY: Nothing of the kind, my lord. I suggest and say, though challenged to do so, they have not proved it.

Mr. Justice LUSH: Do you require proofs of a map which is *published by authority* † for the use of schools? You are in effect suspecting that it was fraudulently made out.

Dr. KENEALY: My lord, I have not said it, nor do I impute it. I do not assign a fraudulent intent to anyone. It may have been ignorantly made: or carelessly, as being one designed for merely elementary purposes: and I asked would it not have been better to produce a map which they could prove, rather than one which when challenged they do not venture to prove.

Mr. Justice LUSH: *Such a map was produced‡ and you took exactly the same objection to it.* Do you expect a Court of Justice to require the map of Europe to be proved?

The LORD CHIEF JUSTICE: There were two maps; one a skeleton map required for elementary geographical education: the other, much more complete. I believe it was also published by Mr. WYLD. The school map is fairly open to the objection that it does not give details.

Mr. Justice LUSH: It is in fact only a skeleton map.

The LORD CHIEF JUSTICE: Yes, a skeleton map, but there was another map of an elaborate character; and it does not appear to me that you could expect better evidence with regard to localities in a distant country.

Mr. Justice LUSH: It was a map which all the world goes by.

Dr. KENEALY: A Court of Justice goes by much more strict rules than all the world goes by.

Mr. Justice LUSH: That is a fair observation; but at the same time you cannot have persons produced to say that they have surveyed Australia, and that the map is correct. You must go by a map published by an independent person long before the Trial commenced.

Dr. KENEALY: I should not be so unreasonable as to expect the Crown to send out a special surveyor to Australia for the purposes of this Trial.

The LORD CHIEF JUSTICE: How then are you to deal with it?

Dr. KENEALY: I say they ought to have produced and proved the best map they could obtain, and not an inferior one, which your lordship rightly designates as only "a skeleton."

The LORD CHIEF JUSTICE: I quite agree with you—but was that done?

Dr. KENEALY: I am speaking of the first map which they produced; and that we challenged, as being incorrect in its distances.

Mr. Justice LUSH: There is no evidence whatever that the skeleton map is incorrect.

Dr. KENEALY: My lord, I cannot, after what passed, concede that it was correct. I alleged from the first that it gave an incorrect idea of distances. Thus, by this species of mapping, ARTHUR ORTON is supposed to have made extraordinary journeys, and to have been here, there, and in some other place, at great distances apart, when it served the Prosecution to make it so.

Mr. Justice LUSH: No one would think of forming a judgment as to the nature of journeys from a skeleton map.

Dr. KENEALY: Yet that is the very thing which the Prosecution desires to be done. However, I will not continue the discussion. If you do not bring forward the best evidence, the law assumes that you fail to do so because the production of the best would render you no service. I make, as I have said, no charge against anyone. The Chief Justice on another occasion challenged me about Mr. WYLD; but it is a pity that there are so many persons interested some way or other in this Case. We have the Treasury represented by Mr. GRAY—a gentleman whom I do not impeach, and whom we all respect. But what of all around him? We have the Family represented by Mr. BOWKER, who seems to be taking as active a part in this Trial as he did in that in the Common Pleas. We have Mr. HOLMES, who is helping the Crown in all ways that he can. We have Mr. CULLINGTON representing, I suppose, Lord ARUNDELL of Wardour. And how many more in the background? We have also an army of Detectives—how numerous I cannot tell—who would probably shrink at nothing, to carry out what they suppose to be the object of their employers. In my last address, I read to you a comment by Mr. Justice CRESSWELL* upon the danger of employing Detectives. Has not every word of that been fulfilled to the letter, in what we have seen of Detectives here?

Gentlemen, I pass now to a number of petty and almost insignificant things which have been suggested to you by Mr. HAWKINS, for the purpose, I suppose, of a make-weight in this Case; as if he were conscious to himself that the Case was not sufficiently strong without throwing into it what I must call "trifles light as air," for the purpose of giving it gravity and balance. Much is made of the fact that the Defendant made mistakes or did not know some of the intricacies of the legal questions connected with the TICHBORNE and DOUGHTY property; when it is almost certain that all, or nearly all that he wrote on this subject was dictated by GOSFORD: and was therefore never part of ROGER'S own knowledge. See his letter bearing date Feb. 4th, 1851. How absurd, then, to expect that he should remember what he never knew: but only copied as GOSFORD dictated! How cruel and unjust to argue from that want of knowledge, that he is not the real man! What can be more weak or flimsy than the suggestion that the Defendant cannot be ROGER TICHBORNE, because he applies the term "uncle" to Mr. HENRY and Mr. ALFRED SEYMOUR? What can be more wretched than that nonsense about putting "Bart." after his name? He is represented in the Opening Speech of Mr. HAWKINS as having been affectionately attached to Abbé SALIS; but this could not have been true; for in the whole of that voluminous correspondence which arose out of his Trials, not even once is there mention of this reverend friend in whom he felt so warm an interest. A great deal was said about the forgetfulness of this poor boy, who, when he was ten or eleven years of age, visited Jersey——

The LORD CHIEF JUSTICE: No! no!—he visited Jersey in 1844, when he was fifteen years old.

Dr. KENEALY: I refer to it in connection with the words "*Belle Tete*," which appear in a letter. The handwriting of that letter seems to have been the handwriting of a mere child.

The LORD CHIEF JUSTICE: There was a visit previously to Guernsey. I think in the year 1840. The handwriting in the letter referred to is similar to the Stonyhurst handwriting.

Dr. KENEALY: I thought there was a journey to Jersey when ROGER TICHBORNE was very young indeed.

The LORD CHIEF JUSTICE: No. The only interpretation to be put on that expression, "*Belle Tete*," is that it had reference to his brother ALFRED, and when he went to Guernsey ALFRED was a child in arms. The journey to Guernsey was made when ALFRED was only a year old. The journey to Jersey would be when ALFRED was five or six years old.

Dr. KENEALY: Gentlemen, I call your attention to some of the irrelevant matters introduced into the Case by the Prosecution. It is represented that he must be an impostor because he does not remember the Abbé TOURSELL, and yet the Abbé was never more than half-an-hour in his company; and only once. Then it is said that he has forgotten the part of RAPINO, which it is alleged he played in the 'Castle of Andalusia,' at Stonyhurst. But it is singularly surprising that none of the gentlemen who have been called from Stonyhurst, and some of whom had parts in the play, remember that ROGER TICHBORNE ever played that, or any other part. If it was played before scores of people there could have been no difficulty in proving it. I ask you to believe that he never played it: and if this be so, what are we to think of those who pretended that he did? The production of a playbill proves nothing; because a dozen accidents may prevent the play being acted as cast. Again, I don't believe that you will think it is anything extraordinary, considering the strange phantasmagoria of life through which the Defendant has passed, that he has forgotten the death of poor JOHN BERKELY. Probably many of you don't remember the deaths of some of your schoolfellows. Again you are asked to believe that he is an impostor

*As Don PEDRO CASTRO was found to be insane, when it was not advisable to call him, so the Rev. Father MEYRICK was locked up in a lunatic asylum on the same pretence (See Vol. V. pp. 154, 155). We are afraid it is now a very common practice, to lock people up on the ground of insanity, whose absence is desirable. We do not know whether the late Lord LYTTON was the first who invented this device; perhaps not. But his abduction and imprisonment of his wife, on a false pretence of madness, will for ever be a record against him of the most diabolical villainy. It is well known that COCKBURN was a secret party to this fraud.

† What authority? Are Mr. WYLD'S maps all infallible? Who makes them? Who drafts them for Mr. WYLD? Was it *impossible* that *some one* should draft a map for him that was not correct?

‡ We do not remember this.

* Vol. III. page 357.

because he forgets that he was invited to a breakfast in Paris in 1853, at CHATILLON'S, who himself gives us the account of it. Can anything be more puerile? Is it thus that men like you are to be dealt with? Then you are asked to form a conclusion adverse to the Defendant because Mr. HAWKINS alleged that, when he was about to sign his marriage certificate, he was about to spell T-I-T-C-H, but he remembered himself, and omitted the "t." Gentlemen, I have examined the certificate, and I can find no trace of a "t," and it is in evidence that twice at least prior to that occasion he spelt the word correctly. Besides, if he was "coaching" himself out of books, he could hardly have made such a blunder! You will form your own opinions as to the accuracy of that allegation with regard to the signing of the marriage certificate, for it is before you. Another little mistake into which Mr. HAWKINS fell was with reference to the cypher. I need only remind you that the cypher, wherever it occurs, is evidently written in a darker ink than the remaining body of the letter, and it suggests the idea that it must have been subsequently introduced; but you will have to judge of that also. This cypher or hieroglyph is *always* in dark ink. Another minor absurdity is that the Defendant did not know the meaning of the word "conical." The cross-examination on that point was to the following effect:—

"What is the meaning of the word 'cone'?—Well, there you puzzle me.

"ROGER TICHBORNE states that he slept on the top of a 'cone.' What should you mean by that?—I suppose that it means a couch of some description."

Now, Gentlemen, in one of the undoubted ROGER TICHBORNE'S letters he says, "It was with the greatest difficulty that I managed to sleep at the top of the cone." Therefore, when the cone is mentioned to him, the Defendant does not grasp the idea, but in a little while he says, "I think it has something to do with a bed," evidently having a glimmering recollection of having some time or other used that metaphor in reference to a bed. Then, again, Mr. HAWKINS says that ROGER CHARLES TICHBORNE intended to come back in three years, because his letters of credit were only for that period; but that is answered by the single remark that no man would think of a letter of credit for a longer period. That was made a great deal of also at the last Trial; I do not suppose you will think much of it, particularly if you recollect that in a letter dated the 15th of March, 1854, he speaks of staying away for ten years.

The LORD CHIEF JUSTICE: When does he say that?

Dr. KENEALY: I will find the reference for your lordship presently. He certainly says so.

The LORD CHIEF JUSTICE: *I think not*; but if you are positive upon it, it must have been in reference to his going with his regiment to India, or exchanging, and that is the period for which regiments go out there.

Mr. TAYLOR (Juror): It is in a letter to GOSFORD, dated April 10th, 1852, and he speaks there of being abroad for ten years.

The LORD CHIEF JUSTICE: Yes; that is in connection with going to India with his regiment; not as to his travels.

Dr. KENEALY: There is another letter in which it is referred to, and I will find you the reference to-morrow. The next point I would draw attention to is that made by Mr. HAWKINS, that on being asked where the Carabineers were quartered the Defendant replied, "the Curragh of Kildare." That is answered by the fact that the regiment was at Newbridge, which is not far off the Curragh; and I think I elicited from one of my Witnesses that the Carabineers did perform some of their exercises on the Curragh.

The LORD CHIEF JUSTICE: There is no evidence of that. The Carabineers were at Newbridge at a later period, but never in ROGER TICHBORNE'S time, unless it might be in passing through on the march to or from Cahir. The Carabineers were never stationed there.

Dr. KENEALY: Assuming that ROGER stayed there a day or two on the way to Cahir, he would be likely to know that the Curragh was used for military purposes.

The LORD CHIEF JUSTICE: But if you asked an officer where he had been quartered he would never say, "At Hounslow," because he had happened to pass a night there when marching into London from a distant town.

Dr. KENEALY: Not an ordinary officer, my lord; but consider the style in which this Defendant was in the habit of talking.

The LORD CHIEF JUSTICE: He was asked where he had been quartered, and he said at the Curragh of Kildare. And it is right to add that he denied having made the statement at all.

Dr. KENEALY: It is stated by GOSFORD, and not corroborated by anyone else. I am submitting that even if true, it does not deserve the stress which has been laid upon it by Mr. HAWKINS, even if he did say it, which he denies.

The LORD CHIEF JUSTICE: That is a very fair argument.

Dr. KENEALY: Considering the reckless, careless way in which the Defendant speaks, I think the argument of Mr. HAWKINS does not possess the force attributed to it. Then, as to the objection that the Defendant referred to Lady JAMES TICHBORNE, I wish to point out that, in the evidence of GOSFORD, in two instances he calls her Lady JAMES TICHBORNE to distinguish her from Lady ALFRED, and says that in affidavits she might be so called for the sake of distinction. I am conscious that I must be wearying you, Gentlemen, with these horribly dull details, but Mr. HAWKINS has referred to these, and other similar matters, and, therefore, I advert to them.

The LORD CHIEF JUSTICE: Mr. GOSFORD says distinctly that they never did know her as Lady JAMES TICHBORNE for the purpose of distinguishing her from Lady ALFRED.

Dr. KENEALY: He says, "I have had occasion to write to Lady JAMES."

Mr. Justice LUSH: If you read the next sentence you will find the words, "We always addressed her as Lady TICHBORNE, not Lady JAMES."

Dr. KENEALY: My contention is that GOSFORD involuntarily slips into an admission here of this mode of addressing this lady. As I have said, Gentlemen, I am ashamed of having to go through all these paltry, miserable things.

The LORD CHIEF JUSTICE: These are all minor points, but when there are many of them they become important.

Dr. KENEALY: That is so, my lord, and I am consequently obliged to go into them.

The LORD CHIEF JUSTICE: I think you are quite right in dealing with them.

Dr. KENEALY: I am much obliged to your lordship for that support, because I look with horror at the fact that I have to go over all these trifles. There was another thing upon which some stress was laid by Mr. HAWKINS, and that was the Defendant's forgetfulness of M. DUPANLOUP. None of the Witnesses venture to say that he was under the instruction of that gentleman for more than fifteen days, and I don't think you will think much of that, especially when you consider that he was at that time too young to be in the same school with so distinguished a scholar as M. DUPANLOUP; it is hardly likely that he would be in the head-master's department. Again, it was stated by Mr. HAWKINS that there was a volume called the *Stonyhurst Almanac* from which the Defendant got some of his knowledge; but allow me to remind you that there has not been the slightest proof of the existence of such a volume. Then, Gentlemen, some stress was laid upon VIRGIL and CÆSAR, but you will not pay much attention to that, because Mr. MANNOCK and other Stonyhurst Witnesses did not exhibit much classical knowledge. Mr. HAWKINS made a passionate appeal to you as to the man who was daily associating for years with educated gentlemen and ladies. Now, you know the way in which this young man passed the three years of his life before he went away, and you will say, I am sure, that nothing can be more fallacious than the idea that he was the associate of educated gentlemen. Then you are gravely asked to believe that the Defendant is not what he is, because he does not know anything about mathematics, chemistry, or physiology. I will deal only with one of them, because there is nothing like evidence that he ever had anything like a knowledge of chemistry and physiology. To say that he ever had a knowledge of chemistry is absurd. As for mathematics, we have him in one of his letters stating, "It was very lucky for me that I was not obliged to study Euclid, for I am very certain I would not have passed."

The LORD CHIEF JUSTICE: To whom did he write that?

Dr. KENEALY: To Lady DOUGHTY, my lord. "I have passed my examination, but it was fortunate for me it was only on regimental matters."

The LORD CHIEF JUSTICE: To study Euclid? My idea is that *he referred to the whole six books!!!*

Dr. KENEALY: My lord, I cite his own words: and I hardly think he could have meant what your lordship supposes, or that it was required at Stonyhurst. If it had been, I doubt if one of them could have learned, or passed. Yet though that was ROGER TICHBORNE'S opinion of himself in 1847, Mr. HAWKINS makes a point of his knowledge of mathematics then, and of his ignorance now.

The LORD CHIEF JUSTICE: He must have known something about it, because he got certificates.

Dr. KENEALY: He probably knew as much of Euclid as Lord BELLEW knew of OLIVER CROMWELL.

The LORD CHIEF JUSTICE: He did not know what county he was born in.

Dr. KENEALY: He thought it was Essex. (A laugh.) Then you remember how Mr. HAWKINS in his Speech fell into an error that it was ROBERT TICHBORNE who met with the accident by falling downstairs at Bath, instead of which it was Sir EDWARD DOUGHTY. If Mr. HAWKINS, who has not led such a life as the Defendant, and who has had seven years' education in the Case, is liable to make mistakes, surely allowances ought to be made for those who have not had his advantages. Again, you were asked to believe that the Defendant is ROGER TICHBORNE because he did not remember that he wore his uniform first at Tichborne when dining with his aunt and cousin. He could not remember it, for he did not. He wore it first at Knoyle.

The LORD CHIEF JUSTICE: That is so.

Mr. HAWKINS: He also wore it at Tichborne.

The LORD CHIEF JUSTICE: Yes; but not for the first time.

Dr. KENEALY: In the Court of Common Pleas a great deal was made of his supposed forgetfulness of a fact which had had no existence. It may have affected your minds, Gentlemen, especially those of you who are acquainted with military matters. The inference you are invited to draw from the fact of his forgetfulness upon this point is that he never wore the uniform at all; and if there had been any supposition in your minds hitherto that the theory of the Prosecution is correct, I beg to remind

you that the whole of their allegations on the matter have been negatived. It is certain that he did not get a new uniform, and it is a singular thing that he should have been able to say, directly the fact was suggested to him, that he obtained one in Dublin, or words to that effect.

The LORD CHIEF JUSTICE: He said he got some of the accoutrements in Dublin.

Dr. KENEALY: He was able to negative the statement that he wore his uniform first at Tichborne, and to state that he got a new uniform at Dublin. Could ARTHUR ORTON have been coached up to that by CARTER, or MCCANN, or any one? or, after the instance of MONTAIGNE, which I have cited (*ante* 74), are we to call this gentleman an "Impostor," because he forgets such trash? * Mr. HAWKINS then says it was impossible for the Defendant, if he were the true man, to forget the ridiculous circumstances of his adventure with the boatmen. I refer to the hoax they played upon him by capsizing him in the mud. If he had been an impostor, Gentlemen, it would have been impossible for such an incident as this to have escaped his notice. The laugh must have been turned against TICHBORNE amongst his brother officers, and every one who knew him would probably hear of it. Mr. HAWKINS states that he had an inkling of the story, but when questioned about it told it erroneously, stating that he himself got out of the boat, and walked through the mud, but presented himself to his Colonel in regimentals.

The LORD CHIEF JUSTICE: He said he presented himself in full uniform.

Dr. KENEALY: It must have made an impression on every Officer in the regiment if he had presented himself to his Colonel on joining the regiment for the first time with his trousers stained with mud; and this fact would have been drilled into the Defendant's mind if he had been coached. Yet the Defendant, who is said to have learned everything, when cross-examined on the point, says he presented himself to his Colonel in full regimentals. He must have been wrong. Like most people, the Defendant, I suppose, did not like to be laughed at, and so shut out from his mind all the ludicrous circumstances which had taken place, and in that way, when asked about this matter, said, "Oh, yes, I was capsized from a boat," but would tell no more about it. I was asked once, when I made a similar remark, whether I meant to convey that he wilfully kept back such things. I submit, in answer to that, that it would be a hard thing to say that all people are wilful and deliberate liars who do not thrust forward all the particulars of a ludicrous incident which created amusement at their expense. Then you are asked to believe that he is not ROGER TICHBORNE because he speaks of the Misses HOWTH instead of the Misses ST. LAWRENCE, and because of his ignorance of Lady THERESA NEAVE, a relative of Lady DOUGHTY's. I doubt much if he ever knew, or cared to know, or deemed it worth a thought, what the names of those ladies were. Mr. HAWKINS relies upon his ignorance of Lady NEAVE as an argument in favour of the Prosecution; but there is no evidence of his ever having seen her; and the fact that Lady DOUGHTY once mentioned her, is hardly enough to justify us in supposing that ROGER remembered her ever after. Mr. HAWKINS then goes on to mention that, although he was a constant visitor at Lady CLANRICARDE'S, he remembers nothing about her. There is no evidence beyond his going to one dinner there.

Mr. HAWKINS: The fact is mentioned in Mr. BURKE's evidence.

The LORD CHIEF JUSTICE: Mrs. WASHINGTON HIBBERT says ROGER TICHBORNE told her he used to visit there, and that Lady CLANRICARDE had been very kind to him.

Dr. KENEALY: I had forgotten Mrs. HIBBERT's evidence, but I do not think that of Mr. BURKE authorises the phrase that he was a constant visitor. He only spoke of one dinner party. Mr. BURKE is speaking from a vague recollection of many years back. There is another point Mr. HAWKINS made capital of—namely, the Defendant's exaggeration with regard to the number of men in the regiment. This mistake is another proof of his not having been coached. Did CARTER, M'CANN, and the others spend their time so badly as to neglect to inform him on a point of this kind? Why, the first thing such accomplished tutors would have said would have been, "Oh, we must tell our master how many men there were in his regiment." On the contrary, however, the Defendant obtained no information, and demonstrated conclusively that he was the real man by stating the idea that was in his mind, which was absurdly worthy of it. He argued with himself, "I am ROGER TICHBORNE, and nobody can prove that I am not myself," and therefore he was careless in statements of this sort. This circumstance, then, I repeat, and the others to which I have called your attention, negative entirely the theory of his having been coached. Another point upon which Mr. HAWKINS lays great stress is the forgetfulness of the Defendant with regard to his correspondence with Lady DOUGHTY. I shall have to address you at length upon that later on, and will not, therefore, go into it now. What I say is, that he did not forget, but that he was resolved not to disclose. The Miss HALES incident is then referred to; but I have given proof *ad nauseam* of her inaccuracy, and I will not dwell further upon that point. And then there is the incident at the ball, which you will agree with me is too ridiculous to notice. Mr. HAWKINS speaks of the incaution of Mr. GOSFORD; but is it likely that Mr. GOSFORD, who had a strong predisposition against this man, and who even wanted to give him into custody at the first interview; is it probable, I ask, that GOSFORD would have been guilty of the incaution imputed to him? It is a crucial point whether you believe the Defendant's or GOSFORD'S account of the interview which took place between them, at which the latter is said to have let out the fact that ROGER TICHBORNE left a Sealed Packet with him. It is within your province to believe Mr. GOSFORD; but if you do not it demonstrates that the Defendant knew only what was known to Mr. GOSFORD and ROGER TICHBORNE, and this fact is proof sufficient that he must be the man he claims to be.

The LORD CHIEF JUSTICE: Do you say that the Defendant referred to the Sealed Packet before Mr. GOSFORD did?

Dr. KENEALY: I say I do not believe it to be credible for a moment that a man like Mr. GOSFORD would have been guilty of the incaution of letting a man whom he believed to be an impostor know what had been confided to him by ROGER TICHBORNE.

The LORD CHIEF JUSTICE: We have Mr. BULPETT'S evidence as well. I thought it was GOSFORD who first challenged him.

Dr. KENEALY: I say the evidence must be taken altogether.

The LORD CHIEF JUSTICE: As far as I understand, Mr. BULPETT entirely corroborates everything Mr. GOSFORD said as to the Sealed Packet.

Dr. KENEALY: It is a matter to which I intend to devote probably a day exclusively, and shall then show the preponderance of evidence is in favour of the Defendant's account of the matter; and that it is extremely unlikely that GOSFORD would tell to an impostor a thing which could only have been known to himself and ROGER TICHBORNE.

The LORD CHIEF JUSTICE: Mr. BULPETT said he did so.

Mr. HAWKINS: Defendant said, in cross-examination, "Mr. GOSFORD did say I had left a Sealed Packet with him marked 'confidential,' and asked me to state the contents of it: but I declined to do so."

Mr. Justice LUSH: They all agree.

Dr. KENEALY: I am sorry to think that Mr. BULPETT hardly knew what he said, he was so rallied, so bothered and so bullied. That, of course, Gentlemen, will be an important question for you to consider, and if you come to the conclusion that Mr. GOSFORD'S evidence cannot be relied upon, it is almost demonstrative of the fact that the Defendant is no impostor. Another thing on which Mr. HAWKINS very much relies is a further statement of Mr. GOSFORD, who swears that the Defendant told him HOPKINS made the will. Now we have it from the other side, in the usual style, that the Defendant was mastering all the facts of this kind, going to Doctors' Commons, and so on, and if this is so, he must have heard from his coaches that the will was made by SLAUGHTER. This is another decisive proof that no coaching took place, and also a proof of the recklessness of the Defendant's statements. Reference is then made to Mrs. NANGLE, and the "scrape" which the Defendant had got into with her, according to his own evidence. He said that she was not on good terms with him because in his will he had not given precedence to her son. Mrs. NANGLE had a large family, and was a very near relative of ROGER TICHBORNE; and if there was an opinion amongst the family that he would never marry, and that he would not live long if he remained in England, she may have thought he would have remembered her and her children. She might have mentioned the matter to him, and this, or certain family quarrels, may have induced the Defendant to leave out the name of the NANGLES from his will. Whether his having done so—knowing the frailty of human nature—has not led to a slight colouring of Mrs. NANGLE'S evidence, I must leave you to judge. Why the Defendant should not have mentioned the NANGLES I do not know; but I put it to you as a matter calculated to excite the wrath of the family. It may have occurred to you that the name of a mere stranger like EVERARD ARUNDELL being mentioned in the will, in preference to members of the Family, was likely to excite the wrath of the SEYMOURS. Mr. HAWKINS goes on to allude to a "flood of information" the Defendant must have obtained from the letters

* The passage from MONTAIGNE is not fully cited in the report; so we append it here, as Dr. KENEALY used it.

"Some," says MONTAIGNE, "have forgotten their own names by the violence of a disease; and a slight wound has turned the judgment of others topsy-turvy. Let a man be as wise as he will, he is still a man, and than that what is there more frail, more of a mere nothing?"—Page 158.

The same author says:

"I was born and bred in the country, and amongst husbandmen; I have had business and housekeeping in my own hands ever since my predecessors, who were lords of the estate I now enjoy, left me to succeed them; and yet I cannot reckon, cast up accounts, nor reckon up my counters; most of our current money I do not know, nor the difference between one grain and another, either growing or in the barn, if it be not too obvious; and scarcely can distinguish between the cabbage and lettuce in my garden; I do not so much as understand the names of the chief implements of husbandry, nor the most ordinary elements of agriculture which the very children know, much less the mechanic arts, traffic merchandise, the variety and nature of fruits, wines, and meats; nor how to make a hawk fly, nor to physic a horse or a dog; and since I must publish my whole shame, 'tis not above a month ago that I was trapped in my ignorance of the use of leaven to make bread, or to what end it was to keep wine in a vat."—MONTAIGNE, p. 305.

written by ROGER TICHBORNE from South America to his mother and father. Now there were only four of these letters from which he could have informed his mind with reference to the career of ROGER TICHBORNE in South America, the majority of the letters, and the more important ones, being in the possession of Lady DOUGHTY and Mr. GOSFORD, and therefore not accessible to the Defendant. With regard to the daguerreotypes, the Defendant denies all knowledge of their having been taken at Rio, and of the man who took them. Is this consistent with coaching? Lady TICHBORNE must have shown them to him repeatedly, and must have compared the features of the ROGER in the likeness and those of the Defendant whom she believed to be the same ROGER. She knew that the portraits were taken at Rio, and, if the Defendant were the artful impostor the Prosecution tries to make him out, would not he have possessed himself of all the information she could give him on the subject?

The LORD CHIEF JUSTICE: The daguerreotypes were deposited in the Court of Chancery.

Dr. KENEALY: Yes, my lord, before he was examined; and yet, although he must have spoken to his Mother about them, he forgot all about where they were taken, and did not make inquiries on the point. He was under the impression that they were taken at Southampton, and he says so.

The LORD CHIEF JUSTICE: How can you account for his swearing that they were taken at Southampton? *Does not a probable motive suggest itself to your mind?*

Dr. KENEALY: No, indeed, I do not see the motive. Nor can I account for his error, if it be one. It proves that he had a bad memory; but it goes against the theory of his being coached.

The LORD CHIEF JUSTICE: *It goes strongly against his truth!*

Dr. KENEALY: My lord, I hope not. The fact may go against his memory, or help to establish his recklessness, but it does no more. Every deviation from truth must not be called a guilty falsehood. This recklessness, as I have before pointed out, is an evidence of bonâ fides. If an impostor is concocting a fraud, he will take every precaution he can. The very fact that the man takes no precaution, and answers with carelessness, or rashly, proves him *not* to be an impostor. The fraudulent man, informed as he must have been by Lady TICHBORNE, never would have made such a mistake. The matter must have been a constant topic of conversation between himself and the Mother, and an impostor would take note of everything about it, so as to make no mistake. Here, the wild man of the woods says thoughtlessly, "Oh! that daguerreotype which I deposited was taken in Southampton." He must have learned long before that it was not, and if he had been an impostor he would have said it was taken at Rio. Instead of that he heedlessly names Southampton. Hardly an hour would have passed—had he been an impostor—that he would not get from Lady TICHBORNE details of this incident, and there and then have stored them up for future use. His Mother had unbounded faith in him. She could have given him the details of all his early life—the journey to the Channel Islands, the fall at Pornic, the residence in Paris, and all the other things to which reference has been made. I therefore consider this an infinitely more powerful argument in favour of his innocence than of his guilt. Mr. HAWKINS considers his ignorance a proof of his guilt; and it will be for you to decide which is the more probable theory.

Mr. Justice LUSH: Do you mean to say that the ignorance of the Defendant as to where the daguerreotype was taken is a proof that he is ROGER TICHBORNE?

Dr. KENEALY: It is a proof that he was not coached by Lady TICHBORNE.

Mr. Justice LUSH: It is a proof that he had no accurate remembrance when he made the affidavit.

Mr. HAWKINS: Lady TICHBORNE was dead when the Defendant in the affidavit said the daguerreotype was taken at Southampton.

The FOREMAN: He reasserts the statement in cross-examination.*

The LORD CHIEF JUSTICE: He strongly denies any portrait having been taken of him at Rio.

Dr. KENEALY: My lord, that is rather a strong phrase. I do not think that he "strongly denies," as your lordship says.

The LORD CHIEF JUSTICE: Read, and you will see.

Dr. KENEALY: Well, my lord, I will. [*Here the learned Counsel read the extracts, which were as follows*]:—

"I asked you how you came to say there was a photograph taken of yourself at Southampton. Was there any photograph taken of you before you went away?—There was a daguerreotype taken.

"Where was it taken?—In Southampton.

"What part of Southampton?—High-street.

"At which side of the Bar?—At the harbour side.

"Who was with you when it was taken?—I was alone.

"What became of it?—I can't say whether the one produced the other day is the same or not.

"Was there more than one ever taken at Southampton?—No, I think not.

"Very well, then, we are talking of the same thing. Is it your judgment that it was taken at Southampton?—No. After reading HELSBY'S evidence I don't believe it to be the same.

"Were you dressed like that?—No, I had no shiny hat on.

"Do you state it to be a Southampton daguerreotype?—I don't swear it not to be.

"In your affidavit you say that a daguerreotype photograph of yourself was taken at Southampton in the latter part of 1852. In the affidavit as originally prepared you did not mention the place, but you put in the word 'Southampton' afterwards. Now, I ask you, is it or is it not a Southampton daguerreotype?—I can't say whether it is or not.

"Do you mean your memory is so imperfect that you can't tell whether the daguerreotype produced is the last taken in this country before you left for South America?—I had a daguerreotype taken before I went away, but I can't say whether that is the one.

"Question repeated.—I can't say whether it is or not.

"Why did you mention the Southampton portrait?—Because I was under the impression it was the only one taken. I had no knowledge of any other.

"Can't you tell what you did with the first and last daguerreotype taken of you?—No.

"Have you any impression?—I have.

"What is it?—That I left the portrait in some boxes at Mrs. THOMPSON'S, in St. James's Place. Mr. GOSFORD was to have sent for it.

"When you saw this (produced), you thought it was the same portrait?—Yes.

"Have you made any inquiry for the Southampton portrait?—No; I don't know what has become of the boxes.

"Where was this one kept?—It was on the table of my dressing-room for several weeks.

"Did you show it to anybody?—All the servants saw it.

"Did you ever show it to any of the members of the family?—No.

"Did you take it to St. James's Place?—Yes.

"To whom did you show it there?—I don't remember.

"What did you have it done for?—What does everybody have their likeness for?

"The CHIEF JUSTICE: Was it to keep for yourself or to give away?

"The CLAIMANT: I forget which. It was a very bad one.

"The SOLICITOR-GENERAL: You say you made no inquiry about it?—That was wrong. Inquiries have been made for the man who took it, but it has not been found where he went to.

"Who inquired after him?—Mr. BAIGENT.

"Just look at that (daguerreotype in case produced) and give me a distinct answer. Do you or do you not say that is the Southampton daguerreotype?—I could not say whether it is or not.

"What is your belief?—I have no belief, except that I don't see a waistcoat there, and I had a waistcoat on when I had it taken at Southampton.

"The CHIEF JUSTICE: I understood you to say that you had not a glazed hat on when you had it taken at Southampton. In your affidavit you say you had a cap on; and now you state you had a waistcoat on; what is your belief now?

"The CLAIMANT: My belief is I was mistaken as regards the daguerreotype.

"The CHIEF JUSTICE: Is that daguerreotype in the case a Southampton daguerreotype or not?

"The CLAIMANT: My belief is it is not.

"The SOLICITOR-GENERAL: Why did you mention the cap the other day? What point did you make of the cap?—I am not aware I made any point of the cap.

"But in your affidavit the specific description of your dress was inserted after the affidavit was originally made, so that you were evidently speaking after consideration and reflection. Have you anything to explain about that?—No.

"How came you to alter the affidavit?—I didn't alter it. My solicitor is better able to speak about that matter.

"When you swore that affidavit had you forgotten you had had another portrait taken?—I don't know that I was aware another portrait had been taken.

"Will you swear that you had no recollection of being taken at Santiago?—I'll swear that I had when I made the affidavit.

"Will you swear that?—Yes.

"Are you now aware of it?—I have been informed so.

"Do you know, independently from information, that you had a portrait taken at Santiago?—I was sitting in HELSBY'S place, but I didn't know there was a portrait taken of me.

"How did that happen?—He didn't inform me of it.

"Why did you go there?—I went to bid HELSBY good-bye.

"Not to have your portrait taken?—No.

"Just tell us what passed as far as you recollect?—He offered me a seat, and I sat there.

"Was there an instrument of any kind in the room?—Yes.

"Did he do anything with it?—I don't remember. I was talking to MOORE.

"You hadn't the least belief you were being daguerreotyped?—I believe I hadn't.

"Do you mean to say you were sitting in the room and you didn't know you were being daguerreotyped?—I believe I didn't. I have no recollection of it.

"Do you mean to swear that at the time a daguerreotype was being taken you were not aware of it?—I will not. I have no recollection of it. It might be that I was aware, but I don't remember now.

"Is that daguerreotype (produced) a portrait of you?—It is.

* See the evidence upon this in the cross-examination in the C. P., pp. 1287, 1290, 1291, 1295, 1296, 1297.

"Where was that taken?—HELSBY says he took it.

"But give us your own impression from your own recollection?—I have no recollection of its being taken.

"Then I understand that if HELSBY'S evidence is true two separate daguerreotypes were taken of you without you knowing it?—Yes.

"You are dressed differently in the portraits?—Yes, I went there at different times.

"Was HELSBY living at a house of his own or at an hotel?—He was living in a house of his own, near the Cathedral.

"Did you yourself go to HELSBY'S to have them taken?—No.

"Will you swear that?—No. How can I swear to what occurred twenty years ago?

"Can you tell me one way or the other, whether you went to HELSBY'S for the purpose of having these two daguerreotypes taken?—No.

"Will you swear you did not, or that you did not tell him you wanted to send them home?—No.

"Will you swear you did not?—No.

"Were they left with MOORE to be sent home by you?—No.

"Did you yourself send either of them home?—No.

"Will you swear you did not?—To the best of my belief, I did not.

"Did you yourself send either of them home?—No.

"Will you swear you did not?—To the best of my belief, I did not.

"Did you ever see them after they were done?—I have no recollection of it.

"Will you swear you didn't?—I won't.

"Why not?—Because I have no recollection of it. When I was there I was drinking very hard.

"Is that your signature (letter produced)?—Yes.

"This is the letter:—

"Buenos Ayres, February 24, 1854.

"MY DEAR AUNT,—Where are you? In what part of Europe have you fixed yourself? Not knowing where you are, I have directed this letter to the care of Mr. GOSFORD, who will forward it to you wherever you are. When I was in Santiago last time, I had two very fair likenesses taken of me. I send one to my parents and one to you, though I doubt that you will know me again. My personal appearance, of which I always took so much care, has been so much improved by the tropical sun that I think I look much more like a red-skin Indian than anything else. But, however, it is not worth thinking about. I arrived here on the 13th of this month, coming from Mendoza, where I had remained a week. I left Santiago on the 11th of January, to cross the Cordilleras of the Andes, which took me a week to do. If you favour me with a letter, will you have the kindness to direct it to Kingston, Jamaica, West Indies, where I shall be in about three months, to get my letters on my way to Mexico? I shall leave Buenos Ayres, I expect, in a few days for Monte Video. Pray excuse this short letter, I had not time to write more by this post. Pray give my love to my cousin.—Believe me, my dear aunt, your affectionate nephew,

"To the Hon. Lady DOUGHTY. R. C. TICHBORNE.

REMBRANDT.

"Do you want to explain that?—I have no explanation to give, except that I have forgotten it.

"You have forgotten you had them taken, forgotten you had them sent home, and forgotten everything about it?—I don't see why you should say 'forgotten to send them home.'

"Why?—Because MOORE may have sent them.

"But you have forgotten everything else about them?—Yes."

The LORD CHIEF JUSTICE: Where do you read that from?

Dr. KENEALY: My lord, I read it from the cross-examination published by Mr. HEYWOOD. There is no substantial difference between it and the Report in Court. And I have chosen this to save time, because it is the shorter. But I find no "strong denial," and I contend that this evidence, fairly considered, demonstrates his innocence.

The LORD CHIEF JUSTICE: I cannot admit the authority of that report.

Dr. KENEALY: Very well, my lord. Gentlemen, you may take it from *my* authority that it agrees with the report before you, and to which you may refer if you think fit. Gentlemen, how would this Defendant act if he were not the real man? Thus: An impostor would have furnished himself with every incident. He would have said from day to day, "Mother, do you recollect so and so—I have forgotten it?" and she had complete trust in him, and would have opened her heart and soul to him. French ladies, we know, are eloquent and fond of talking, and she would have given him information with respect to every incident of his life. He had only to ask, and he would have got everything. One of these likenesses was designed for his aunt, the other for his mother. If you look at them closely you will discover an air about them that might justify the statement made by the Defendant to the effect that he was asleep when they were taken. He appears to be in a state of semi-consciousness, and this is consistent with our knowledge of his habits and state of health whilst he was at Rio. Mr. HAWKINS speaks of the story of the mules and their surefootedness, and this story I consider a remarkable one, because we find that he made the first allusion to it long before he arrived in England. How he could have got these facts I don't know. Mr. HAWKINS suggests that he got them from a diary; if he did I should like to know where that diary is. If there is no diary the Defendant must be relating an occurrence at which he was present. He could not have got it from any letters addressed to Lady DOUGHTY or Mr. SEYMOUR, because these were as carefully locked away from him as if they had been in the Bank of England. Mr. HAWKINS could not suggest where he got it.

The LORD CHIEF JUSTICE: Did not Mr. HAWKINS suggest where

he got it? I think there is a very clear way of accounting for it which I shall submit to the Jury, and which I will tell you if you wish.

Dr. KENEALY: I am quite willing.

The LORD CHIEF JUSTICE: He may have got it from MOORE, who got it from the muleteer. It would be very natural that MOORE should inquire how they had got over the Andes; how they had fared on the journey; and the muleteer would tell him what had happened, and he could communicate that to the Defendant.

Dr. KENEALY: The suggestion did not occur to the mind of the Prosecutors.

The LORD CHIEF JUSTICE: I presume they thought you would call MOORE. There may have been good reasons why you did not call MOORE. But MOORE may have related it to the Defendant.

Dr. KENEALY: My lord, there is hardly anything that may not happen—but is that a reason why, in a Court of Justice, we should assume that it did? That idea did not occur to the Prosecution. It was not suggested at the time, and at the best I look upon it as a wild supposition.

The LORD CHIEF JUSTICE: So far from that, it is a supposition which naturally occurs to one's mind.

Dr. KENEALY: It is a supposition based upon a supposition—that the muleteer first told the story to MOORE, and that MOORE then related it to the Defendant.

The LORD CHIEF JUSTICE: You should read MOORE'S evidence before you talk of a "wild supposition."

Dr. KENEALY: My notion on the subject is not the same as your lordship's, and I have not MOORE'S evidence. Mr. HAWKINS made a mistake with reference to the events which followed the rescue from the 'Bella,' and with regard to the 'Osprey' at Melbourne; but these will be mentioned in their turn. With regard to the story of the cheque, I was about to refer to the evidence of Mrs. GREENWOOD, but I am not able to do so. I regret to say I am not supported as I ought to be. I have no one to give me a hint, a suggestion, or a reference, even when I ask for one. [*Both the Junior Counsel for the Defendant were absent.*] With regard to Mr. HAWKINS'S reference to the search made by the Defendant in Liverpool for some record of having been picked up at sea, I can hardly imagine an impostor going gravely down to that place, and calling from house to house to discover a log which he knew could not exist. Now, Gentlemen, the following is the way in which Mr. HAWKINS suggests to you that the Defendant was occasionally helped in the information which he was endeavouring to acquire. He said, "I have shown you that with a small stock of knowledge he started originally; but gradually, little by little, he kept accumulating knowledge, till at last he knew something." I need hardly tell you that "the small stock of knowledge" which he possessed when he arrived at Sydney was sufficient to convince BOGLE that he was ROGER TICHBORNE: otherwise the Prosecution are driven to the conclusion that BOGLE was his co-conspirator. But Mr. HAWKINS had met BOGLE before, and he thought that it would be hard to persuade twelve Gentlemen like you that BOGLE was playing the part of co-conspirator in this Case, and so that theory is accordingly suggested rather than stated. Then Mr. HAWKINS talks of "the fabricated life of ROGER TICHBORNE and the fabricated story of the shipwreck." At that time he was not aware of the evidence which I have called, and which has demonstrated that there was an 'Osprey' in Melbourne Harbour in 1854. Then Mr. HAWKINS follows that up by a dissertation on the Defendant accepting a nonsuit in the Court of Common Pleas, which he concludes by saying "which meant that he (the Defendant) would not further prosecute his claim." I will, in few words, Gentlemen, make it clear to you that this was an illusion. A claimant who submits to a nonsuit tells nobody tacitly, inferentially, or in any other way, that he will not further prosecute his claim. The Jury, after hearing the Claimant's Case, intimated that they had made up their minds. Well, the difficulty of making a Jury withdraw from an opinion they have once expressed is insuperable—probably there never was an instance of such a thing having been done. I do not recollect one in the whole of my experience. Under such circumstances, a man would be a perfect maniac who would ask a Jury to go on after an intimation to the effect that their minds are made up. The law in such a case allows a man to elect to be nonsuited, but he is not precluded by so doing from making his claim again; neither is he damnified in the eyes of the law. If any of you, Gentlemen, have derived an erroneous impression from the language of Mr. HAWKINS, I hope these remarks of mine will have been sufficient to remove it.

Gentlemen, Mr. HAWKINS then went to that point with reference to the lobes of the Defendant's ears and the manufactured peculiarity on the thumbs. The ears I shall have to speak of later on, but the question of the thumbs I think we touched yesterday. I call your attention to various other small points made by Mr. HAWKINS; but first I will allude to the frequency with which we hear the Defendant in cross-examination saying, "I don't remember." I wish to point out that he does not mean by this absolute forgetfulness. He says to himself, "I have not an absolute forgetfulness of it, but I am not positive." This shows a carefulness which I should not have expected from him. It may not be to his interest for me to acknowledge this, but I cannot help doing so. When he is asked about the number of philosophers at Stonyhurst, for instance, he says he does not remember.

The LORD CHIEF JUSTICE: He gives the number—80 or 90.*

Dr. KENEALY: Then he gives a wrong answer. Gentlemen, if any of you had passed through the life this man says he has passed through, you would know there is nothing extraordinary in a man forgetting the number of students at the school he attended in his youth. We ourselves, I daresay, would be unable, if questioned on the point, to say how many schoolfellows we had. He is asked if he knows the number of rooms at Stonyhurst College, and their exact situation, the names of the different rectors, of the lay brother, whether he remembers playing at hockey and bandy-ball, and after all those years whether HUMPHREYS had a nickname, whether a certain building was called St. Mary's Hall or something else, whether the Hodder and the Ribble were near the College, what young ladies he danced with at Paris, what was the meaning of the letters "A. M. D. G." and "L. D. S.," and a variety of things the most absurd and contemptible; and you are asked to say that this Defendant is not ROGER TICHBORNE because he does not remember nonsense of this kind. Mr. HAWKINS himself sums it up—"He did not remember his playmates, the schools he went to, the theatricals he played in, or any incidents of his childhood, or his brother's nickname." Fancy a grown up man, who passed through ten thousand phases of life, being asked to remember the nickname given to his brother when he was a child. Mr. HAWKINS continues:

"He forgets his Stonyhurst tutor and every scrap of information he got there: he forgets his examination for entering the army; he forgets every house he stayed at; he forgets the very language, nay, the very alphabet of the language—which he spoke for sixteen years."

If he forgets all these things, Gentlemen, I say he is not coached. Mr. HAWKINS goes on. He asks him whether he ever saw Lord BELLEW at Cahir, and he says not.

The LORD CHIEF JUSTICE: No, he says he did: and Lord BELLEW says he never was there.

Dr. KENEALY: Lord BELLEW denies what the Defendant swears: *ergo*, the Defendant swears falsely. This is the logic used. He is asked the names and ages of the Misses SEYMOUR. I don't know whether you Gentlemen know the names and ages of your aunts, or think it necessary to keep a record of them—(laughter)—but I should think few men would take the trouble to impress such facts on their minds. If he had been an impostor, he might, perhaps, have got an idea of their ages if he had looked into "BURKE," though I am not sure that they would enter them.

The LORD CHIEF JUSTICE: Perhaps the ladies would not tell their ages. (Laughter.)

Dr. KENEALY: If the Defendant had stated the names and ages of his aunts, why, you would have set him down for an impostor at once. If he had given even the proximate age, the Solicitor-General would have asked, "From what Family History did you get that information? Or did BAIGENT tell you?" and he would at once have argued that this man was an Impostor, and must have read some Family History. Thus, if he knows facts he is an Impostor: and if he does not know them he is an Impostor: and in this spirit this Case is tried. Mr. HAWKINS then reads with strong emphasis a passage in one of the Defendant's letters, in which he speaks of "sparrow-grass," and it is said that no one but an ignorant lout would have used such a word as that.

Mr. TAYLOR (Juryman): There are various other misspellings in that letter.

Dr. KENEALY: Yet Mr. HENRY SEYMOUR, a man of education and intelligence, who may be taken as a representative of the day, once made the very same mistake, writing "sparrowgrass" for "asparagus."

Mr. Justice LUSH: I am sure I have seen the word "sparrowgrass" in print.

Dr. KENEALY: The word is frequently used for the sake of brevity. (A laugh.) Your lordships must have heard it occasionally amongst intelligent and cultivated people.

The LORD CHIEF JUSTICE: It may be the old form of the word. I have heard of a charade being composed upon the word "Sparrowgrass;" but that, I should think, must have been by a gentleman cast and not west of Temple Bar. (Laughter.)

Dr. KENEALY: I believe the word is used in one of HORACE WALPOLE'S letters.

The LORD CHIEF JUSTICE: Very likely.

Dr. KENEALY: As-par-a-gus is a long word; one does not care to use it. It is easier to say "sparrowgrass."

The LORD CHIEF JUSTICE: I believe you are warranted in the observation by this: that the dealers in it call it "grass."†

Dr. KENEALY: Gentlemen, this Defendant is not ROGER TICHBORNE because he calls asparagus by a short nickname. Was there ever such nonsense? Is not Mr. HAWKINS, in the words of LEAR, "fooling to the top of his bent"? We shall soon, perhaps, enquire whether he eats his fish with a knife? If he does, this Case is at an end. He can be no gentleman! Do *men* really mind these things? Some do; but we are not all so

* See, for the Defendant's evidence on the subject of these "philosophers," in the cross-examination, pp. 1006, 1009, 1018, 1019, 1023-26, 1036, 1039, 1040.

† Was this a reminiscence of Lady COCKBURN'S first husband, who was a greengrocer, and who probably often served the then Mr. COCKBURN with "grass"?

observant about trifles as the philosopher whom VOLTAIRE commemorates. As we are going to adjourn, and the accuracy of the sage may amuse you during luncheon, forgive me if I remind you of its details:—

One day, as he was walking near a little wood, says the philosopher of Farney, he saw one of the queen's eunuchs running towards him, followed by several officers, who appeared to be in great perplexity, and who ran to and fro like men distracted, eagerly searching for something they had lost of great value. "Young man," said the first eunuch, "hast thou seen the queen's dog?" "It is a bitch," replied ZADIG with great modesty, "and not a dog." "Thou art in the right," returned the first eunuch. "It is a very small she-spaniel," added ZADIG, "she has lately whelped; she limps on the left fore-foot, and has very long ears." "Thou hast seen her?" said the first eunuch, quite out of breath. "No," replied ZADIG, "I have not seen her, nor did I so much as know that the queen had a bitch."

Exactly at the same time, by one of the common freaks of fortune, the finest horse in the king's stable had escaped from the jockey in the plains of Babylon. The principal huntsman and all the other officers ran after him with as much eagerness and anxiety as the first eunuch had done after the bitch. The principal huntsman addressed himself to ZADIG, and asked him if he had not seen the king's horse passing by. "He is the fleetest horse in the king's stable," replied ZADIG; "he is five feet high, with very small hoofs, and a tail three feet and a-half in length; the studs on his bit are gold of twenty-three carats, and his shoes are silver of eleven pennyweights." "What way did he take? where is he?" demanded the chief huntsman. "I have not seen him," replied ZADIG, "and never heard talk of him before." The principal huntsman and the first eunuch never doubted but that ZADIG had stolen the king's horse and the queen's bitch. They therefore had him conducted before the assembly of the grand desterham, who condemned him to the knout, and to spend the rest of his days in Siberia. Hardly was the sentence passed when the horse and the bitch were both found. The judges were reduced to the disagreeable necessity of reversing their sentence; but they condemned ZADIG to pay four hundred ounces of gold, for having said that he had not seen what he had seen. This fine he was obliged to pay; after which he was permitted to plead his cause before the council of the grand desterham, when he spoke to the following effect:—

"Ye stars of justice, abyss of sciences, mirrors of truth, who have the weight of lead, the hardness of iron, the splendour of the diamond, and many of the properties of gold: since I am permitted to speak before this august assembly, I swear to you by OROMASDES, that I have never seen the queen's respectable bitch, nor the sacred horse of the king of kings. The truth of the matter was as follows: I was walking towards the little wood, where I afterwards met the venerable eunuch; and the most illustrious chief huntsman. I observed on the sand the traces of an animal, and could easily perceive them to be those of a little dog. The light and long furrows impressed on little eminences of sand between the marks of the paws, plainly discovered that it was a bitch, whose dugs were hanging down, and that therefore she must have whelped a few days before. Other traces of a different kind, that always appeared to have gently brushed the surface of the sand near the marks of the fore-feet, shewed me that she had very long ears; and as I remarked that there was always a slighter impression made on the sand by one foot than by the other three, I found that the bitch of our august queen was a little lame, if I may be allowed the expression.

"With regard to the horse of the king of kings, you will be pleased to know, that walking in the lanes of this wood, I observed the marks of a horse's shoes, all at equal distances. This must be a horse, said I to myself, that gallops excellently. The dust on the trees in a narrow road that was but seven feet wide was a little brushed off, at the distances of three feet and a half from the middle of the road. This horse, said I, has a tail three feet and a-half long, which being whisked to the right and left, has swept away the dust. I observed under the trees that formed an arbour five feet in height, that the leaves of the branches were newly fallen; from whence I inferred that the horse had touched them, and that he must therefore be five feet high. As to his bit, it must be gold of twenty-three carats, for he had rubbed its bosses against a stone which I knew to be a touchstone, and which I have tried. In a word, from the marks made by his shoes on flints of another kind, I concluded that he was shod with silver eleven deniers fine." All the judges admired ZADIG for his acute and profound discernment. The news of this speech was carried even to the king and queen. Nothing was talked of but ZADIG in the ante-chambers, and the cabinet; and though many of the Magi were of opinion that he ought to be burnt as a sorcerer, the king ordered his officers ro restore him the four hundred ounces of gold which he had been obliged to pay. The registrar, the attorneys, and bailiffs went to his house with great formality, to carry him back his four hundred ounces. They only retained three hundred and ninety-eight of them to defray the expenses of justice; and their servants demanded their fees."

[The Court then adjourned for luncheon.]

On reassembling,

Dr. KENEALY continued: In reference to the "sparrow-grass," one of my learned friends has referred me to JOHNSON'S Dictionary, where this form of spelling is given, with the authority of a quotation from Dr. KING'S "Art of Cookery," commencing—

"Your infant peas to sparrow-grass preferred."

I may seem to be taking up your time with these little things, but it is because so much importance has been attached to them by the Prosecution. I really mean, however, to have regard for your time, and will not fire a single shot unless it be necessary.

A JURYMAN: We are much obliged to you.

Dr. KENEALY: I will do all I can in that direction.

A JUROR (Mr. Taylor): Many a little makes a mickle.

Dr. KENEALY: But it is necessary for me to run over them. He was asked questions about the "Tumble Down Dick," as if any young fellow who has been in the army can remember all the pot-houses he goes to. Then a great deal was made out of his not remembering the name of Miss DOUGHTY'S favourite mare 'Rowena;' but yet Colonel GREENWOOD himself cannot tell when it was presented by him without reference to his memorandum book. His ignorance of the meaning of the word "serafile," as I before remarked, is no more proof of his not being the man he represented himself to be, than the ignorance of the French priests as to the "Garden of the Soul" shows that they are not Catholics. Then he has been asked about the boats of the 'Bella,' whether they had square or round sterns, and a gentleman has been called from Liverpool to prove that whale boats were of modern invention, though I, and I have no doubt you also, remember them as far back as our memory goes.

Gentlemen, I must now ask your attention to what is one of the most serious portions of Mr. HAWKINS'S address, and that is the part where he prefers a charge of conspiracy against a great number of highly respectable people. Now, if there is any ground for that charge, I think it was the duty of the Crown to indict them upon it. It is not the duty of the Crown to make charges which they cannot substantiate. In the course of his speech Mr. HAWKINS said, "The result of the cross-examination by my learned friend must have told those who were conducting the Case of the Defendant that they had a good deal yet to learn before they could make themselves quite acquainted with the history of ROGER TICHBORNE. In the autumn of 1867 and the spring of 1868 they were occupied in paying fresh visits to all places where old Carabineers could be found. The house at Croydon Lady TICHBORNE had left in the spring of 1867, and it was an almost open house to anybody who could give assistance. There were Mr. BAIGENT and Miss BRAINE, who had been governess to Miss DOUGHTY, and who could give assistance to the Defendant in improving him in his writing and enabling him to pick up a scrap of French." Now I appeal to you, Gentlemen, whether that lady did not conduct herself with great dignity in the box, and whether if her object in being at Croydon was to enable the Defendant to pick up a scrap of French she could not have taught him sufficient French to become a master of it. We have had the pleasure of seeing Mr. ROUS here giving what assistance he could to the Prosecution, and yet we have Mr. HAWKINS speaking of him in this way: "The autumn was not wasted, but they paid a visit to Hampshire, where the Defendant desired to take a house, saying, in a letter to ROUS, 'it will serve my cause. A great deal of the gentry will call upon me.'" Now, there is a charge of as guilty a conspiracy as can well be suggested. The Foreman of the Jury did not seem quite to appreciate this, for he put the question—"Where was Lady TICHBORNE living at this time?" and Mr. HAWKINS said she was living in London, and he said, "I do not know that there is any reason assigned for it, although I shall be able before the Case closes to show a tolerably good reason. But I do not like to pledge myself to it, because I am not perfectly certain what the Witness I desire to call upon the subject will say." It would appear from the language Mr. HAWKINS was instructed to use that these are not the only individuals whom he connected with this combination, because I am sorry to say that the Counsel for the Defendant, Mr. Serjeant BALLANTINE, was charged with being to a certain degree implicated. It is not usual in our profession to charge Counsel engaged in defending a man with guilty complicity. A great deal has been made about the meeting called at Alresford, in order to know whether certain letters by Mr. HOLMES to Defendant were real or not, and you remember the guilty weakness which the Defendant then exhibited. That has always been made a great card of by the Prosecution. Mr. HAWKINS said, "I now come to something which seems to me even more shocking, the deliberate imposition on poor Mr. SCOTT. They took his money which he had advanced, believing that he had been relieving a man who had been injured and oppressed. They spent his money in the prosecution of the suit, they induced him to believe in the Defendant, and they put him into the Witness-box for the purpose of giving his evidence, he still labouring under the idea that these letters were genuine. They never undeceived him, but permitted him to give his evidence, so that you have a gentleman who was permitted to give his evidence under a false impression."

Mr. HAWKINS: Your lordships will not for one moment suppose that I was alluding to the Counsel in that case.

Dr. KENEALY: Whatever your lordships may suppose, there is the language.

Mr. HAWKINS: Your lordships will remember that there were certain persons present at the meeting, and that the statements

made by the Defendant were untrue. Those persons were in the Defendant's interests.

Dr. KENEALY: I have been more than once accused of doing this; but I never said anything that can be at all compared to the distinct and positive charge of conspiracy made by Mr. HAWKINS. I don't know who all the persons referred to are: but Miss BRAINE is spoken of as being a person "who could give little hints here and there, and assist him in picking up a scrap of French, and in improving his writing." Was she one of the conspirators? or Mr. SPOFFORTH? or Mr. WHALLEY? or Mr. ONSLOW? Thus it is that Mr. HAWKINS casts his dark arrows. I had intended, Gentlemen, to call your attention to the attempts that have been made to prejudice the Case by connecting the Defendant with the bushrangers, but I will not take up your time by doing so. I am sure you won't be prejudiced by anything of the kind. A great deal has been said about his forgetting French. I have referred to plenty of persons who have forgotten their native language. I only wish now to give one further instance. Chief Justice HALE devoted himself at College to the study of ARISTOTLE. Yet we are told by Bishop BURNET that he afterwards forgot his Greek; and Sir MATTHEW HALE, it is unnecessary to say, was a man of great mind. Another mistake Mr. HAWKINS fell into was that of saying ROGER was a constant visitor at Bilton Grange. I am not sure that I am quite correct, but I think he was there only once.

The LORD CHIEF JUSTICE: Three times.

Dr. KENEALY: I am much obliged to your lordship for the correction, which does not affect my statement. Then he said ROGER used to go to Wardour Castle Sunday after Sunday, and this also has been proved to be inaccurate. I must now call your attention to a matter for which I will always take shame to myself for not having previously spoken of. In fact, so long as I walk this mortal earth I don't believe I shall ever forgive myself for overlooking it. I refer to the part of Mr. HAWKINS'S Speech, where, speaking of the Promissory Document given by ROGER to Miss DOUGHTY, he says the date, "June 22nd, 1852," is not in ROGER'S handwriting, and adds that, unless it is believed to have been fraudulently forged by Miss DOUGHTY, it must either have been put there at the time by that lady or by ROGER himself. Now the date in this case is vital; and the question is all important—was it fraudulently made or not? I invite you to look at it for yourselves, and I must say I cannot believe Mr. HAWKINS would make that grave statement without good and feasible reasons. I must assume that somebody instructed him that it was not ROGER'S handwriting; but I see your lordship looks inquiringly, and therefore would like to see the Document before I express any opinions on it. [The Lord Chief Justice here examined the Document or a facsimile of it.]

Dr. KENEALY: I should like to look at it, my lord.

The LORD CHIEF JUSTICE: I was going to say that you had better do so. [The document was here handed to Dr. KENEALY.] With the knowledge you have acquired of ROGER TICHBORNE'S handwriting, I should have supposed that you could not entertain the shadow of a doubt that that date was written by him.

Dr. KENEALY: My lord, Mr. HAWKINS'S advisers must have known what they instructed him for.

A JUROR: The document is there to speak for itself.

The LORD CHIEF JUSTICE: If it is a forgery, it is a most perfect one.

Dr. KENEALY: People who commit forgeries usually try to imitate the writing of the person they intend to personate.

Mr. HAWKINS: If your lordship looks at the document carefully you will find the explanation. There is a memorandum at the top. On the last Trial there was some remark about an endorsement, and the matter was explained.

Dr. KENEALY: We have nothing to do with that. I am talking about what was said by Mr. HAWKINS about the date I have mentioned.

The FOREMAN: There are two dates.

A JURYMAN: It is evidently Miss DOUGHTY'S writing on the back.

Dr. KENEALY: But Mr. HAWKINS evidently referred to the first and not to the one at the back.

Mr. HAWKINS: I rather think Lady RADCLIFFE was cross-examined on that very point, and the whole thing was explained.

The LORD CHIEF JUSTICE: The first of the documents is in her undoubted handwriting. I refer to the place in which she says, "This is the last time I saw ROGER."

[Mr. HAWKINS then read that part of his Speech in which he spoke of the date, and referred to different parts of the Document.]

The LORD CHIEF JUSTICE (to Dr. KENEALY): I think you may now consider your forensic conscience entirely relieved. (A laugh.) You may consider, I think, that you have not failed in your duty in not inquiring about that.

Dr. KENEALY: With the greatest deference to your lordship, I say that my interpretation is the only one that can be fairly put upon it, namely, that what Mr. HAWKINS said refers to the date of the 22nd of June. He made no reference to the handwriting of Lady RADCLIFFE. If every document produced here in the name of ROGER TICHBORNE, or others, and supposed to be in his handwriting, or in the names of others, is genuine, the Defendant is ignorant of a great deal which he should have known and remembered. I myself wish that I had not too hastily imagined that all their writings were genuine. I ought to have been put on my guard by the PITTENDREIGH Forgeries. It is now too late. The occasion has passed when I might have acted otherwise. Nor can it now be recalled. I entreat your aid in this scrutiny which I myself did not make. Further I will not add. Had I been properly instructed—had I been loyally helped, a great deal of what has happened here might have taken a different aspect from that which it now wears. But I have not been instructed, and I have had but little aid.*

Mr. TAYLOR (Juror): The date June 22 occurs twice—once in ROGER TICHBORNE'S writing, and once in Lady RADCLIFFE'S.

Dr. KENEALY: Excuse me; the date at the back does not seem to be Lady RADCLIFFE'S writing, but that of some Clerk.

Mr. HAWKINS: Lady RADCLIFFE said the document never went out of her possession.

Mr. TAYLOR (Juror): The second date is on the 4th page.

The LORD CHIEF JUSTICE: Do you suppose that Mr. HAWKINS meant to suggest to the Jury that the date was a forgery?

Mr. TAYLOR (Juror): We should never suspect Mr. HAWKINS of doing such a thing as that.

Dr. KENEALY: All I know is that these are his words.

Mr. TAYLOR (Juror): They evidently refer to the date at the back of the document.

Another JURYMAN: We had better pass on to the next subject.

Dr. KENEALY: With all respect to you, I say they referred to the date of the document.

Mr. TAYLOR (Juror): Yes, but you see we have the document to speak for itself.

Dr. KENEALY: Did you ever see a person imitate another's handwriting, and not make the imitation as good a one as he could?

The LORD CHIEF JUSTICE: Then you say the whole document was forged?

Dr. KENEALY: No, I don't say that. By-and-bye, when I come to that most painful portion of the Case, I shall have to comment on that document; but in the meantime I say that Mr. HAWKINS'S language evidently refers to the date of the document and not to the indorsement.

The LORD CHIEF JUSTICE: There are two characters that I have never known Mr. HAWKINS to assume—one is that of a Rogue, the other as a Fool. He would be a Rogue if he produced a document the date of which he knew to be forged; but if he were Rogue enough to do so, he would not be Fool enough to tell the Jury that there was question about it.

Dr. KENEALY: I give him credit for candour.

Mr. TAYLOR (Juryman): Your view of it is not complimentary to the Jury.

Dr. KENEALY: Well, you have heard my interpretation of the language.

A JURYMAN: We do not accept your interpretation.

Mr. TAYLOR (Juror): Dr. KENEALY may think that the Jury has come from Earlswood instead of Middlesex. (Laughter.)

Dr. KENEALY: At all events I shall not readily forgive myself for not having cross-examined Lady RADCLIFFE upon the point. But we all make errors; and perhaps it was due to error that the Prosecution neglected or forgot to call one of the most important Witnesses in the Case, JULES BERRANT, the French servant of ROGER, who could have told us a good deal about the tattoo, and could have rebutted the evidence of Captain BROWN. Strange that they should not have called him; strange that they did not explain the reason why.

What might we not have learned from that Witness, JULES? an observant Frenchman, no doubt, who thoroughly scanned his master! His body-servant, he must have known of the tattoo; in constant attendance upon him, he must have been acquainted with his malformation, the brown mark on his side, his habits. We should have learned then whether he was leading an ascetic life, or not; whether he was absorbed in dreams of Miss KATE DOUGHTY; or whether he was not leading a life the very contrary of that which has been so complacently assumed and stated and insisted upon. We now thoroughly know how wretched and despised he was at home. I have already told you with what eagerness he must have fled from so loathsome a place of existence. There were times when a flash broke out, which shewed that he had a nature capable of much that was excellent, if not even beautiful; if only scope were given. There were occasions when he gave himself up to the companionship of noble essences in books. Wretched as his life here had been as a whole, and low his tastes and his pursuits, we should err if we supposed that there shone at times no gleam of poetry through his nature. He had occasionally read CHATEAUBRIAND, as we know: he may have fallen upon, and been inspired by, that dazzling passage on New World scenery, which I pray you to forgive me if I cite. "One evening," he says, "I had lost my way in a forest at a short distance from the Falls of Niagara. The day soon expired around me, and I tasted in all its solitude the lovely spectacle of a night in the deserts of the New World. An hour after sunset the moon showed itself above the branches, on the opposite side of the horizon. An embalmed breeze, which the Queen of Night seemed to bring with her from the east, preceded her with its freshening gales. The solitary star ascended by degrees in

* There can be little doubt that the documents produced by the Convict MINA JURY, *alias* MERCIVINA CAULFIELD, were forged. We now believe that a great many Forgeries were produced at the Trial.

the heavens; sometimes she reposed on the groups of clouds which resembled the summits of lofty mountains covered with snow. These clouds opening and closing their sails, now spread themselves out in transparent zones of white satin, now dispersed into light bubbles of foam, or formed in the heavens bars of white so dazzling and sweet, that you could almost believe you felt their snowy surface. The scene on the earth was of equal beauty; the declining day and the light of the moon descended into the intervals of the trees and spread a faint gleam even in the profoundest part of the darkness. The river which flowed at my feet alternately lost itself in the woods, and reappeared brilliant with the constellations of night which reposed on its bosom. In a savanna on the other side of the river, the moonbeams slept without movement on the verdant turf. A few birches, agitated by the breeze and dispersed here and there, formed isles of floating shadow on that motionless sea of light. All would have been in profound repose but for the fall of a few leaves, the breath of a transient breeze, and the moaning of the owl; while in the distance at intervals the deep roar of Niagara was heard, which, prolonged from desert to desert in the calm of the night, died away at length in the endless solitude of the forest. The grandeur, the surpassing melancholy of that scene, can be expressed by no human tongue;—the finest nights of Europe can give no conception of it. In vain amidst our cultivated fields does the imagination seek to expand—it meets on all sides the habitations of men; but in those savage regions the soul loves to shroud itself in the ocean of forests, to hang over the gulf of cataracts, to meditate on the shores of lakes and rivers, and feel itself alone as it were with God."

Gentlemen, shall we take upon ourselves to say that these sentiments may not have had their influence upon TICHBORNE? may not have cheered him in his varied adventures, for what he may have abandoned or lost in Europe? Hard would be the heart that could deny him the possession of such feelings! Cruel would be the mind that would laugh to scorn the suggestion that he was not capable of them. In thought I see him weeping on the barrack steps; and flying from the desolation around him into the scenes that CHATEAUBRIAND had pictured so vividly. Happy anywhere but in the society of the hollow crew who mocked him. Often may the thoughts of the unhappy Miss LANDON have occurred to him as to those by whom he had been encompassed.

> "He scorned them from the centre of his heart,
> For well he knew mankind: and he who knows
> Must loathe or pity. He who dwells apart
> With books or nature, and philosophy,
> May lull himself with pity: he who dwells
> In crowds and cities, struggling with his race,
> Must daily see their falsehood and their faults,
> Their cold ingratitude, their selfishness—
> How can he choose but loathe them?"

Gentlemen, we are mocked when we are told that this man

MISS LETITIA ELIZABETH LANDON.

had friends. He did not possess one—and he felt that he did not. Therefore it was that he fled.

> "Not in a close and bounded atmosphere
> Does Life put forth its noblest and its best;
> 'Tis from the mountain top that we look forth
> And see how small the world is at our feet.
> There the free winds sweep with unfettered wing:
> There the sun rises first, and flings the last,
> The purple glories of the summer eve.
> There does the eagle build its mighty nest:
> And there the snow stains not its purity.
> When we descend, the vapour gathers round,
> And the path narrows: small and worthless things
> Obstruct our way; and in ourselves we feel
> The strong compulsion of their influence,
> We grow like those with whom we daily blend." *

If you compare this conduct of TICHBORNE in secluding himself from all "society" for so long a period, you will find in the Defendant traits of identity, which remarkably coincide with it. His unhappiness in England is so clearly shown that I need not say a word upon it. Hence his resolve to fly. Now ROGER TICHBORNE was in many things a man of very determined will; in some he was as weak as water. What he once seriously meditated, he could not be easily driven from. He resolved to go to India, and nothing could shake him. He resolved—as we see in his letters to Lady DOUGHTY—to abandon Father, Mother, Relations, and Society, and to seclude himself from the world; and he did so, I say, in the wilds of Australia. Early in life he had a fixed aversion to the priesthood; and he never lost that feeling.* Unfortunately for himself, he made it public; and it has helped perhaps to bring him here. Yet all those Judas priests affect to hold him in the highest regard and love. Since his return to England, note the inflexibility with which he has followed up his claim, undeterred by obstacles that would have appalled a common man. In this consistency of character I invite you to find powerful evidence of identity. You will be told that he loved his Father; and could not have intended to be absent from him for so many long years as this Defendant was absent. *I* contend that he left England never

* Miss LANDON.

* In his letter to Lady DOUGHTY, dated Cahir, 16th Feb., 1851, he says, "*I have had enough of the Irish way of confession.*" Did they question him too closely? or what? In a letter to his Aunt, he says, "It is wonderful I have seldom come within reach of a priest or a bishop, that they have not done me some mischief or other. That is one of the reasons why I seldom go near them."

again intending or wishing to see his Father's face; and that this was one of the reasons why his Father in return disliked *him*. What does Lady TICHBORNE say in her Letter to him of 25th Feb., 1866? "*Remember the promise you made to your dear Father, before you went away, that if God called him to Himself, you would come back and be your Mother's protector.*" Does not this indicate a final parting between him and Sir JAMES? Does it not indicate something more? That the Mother required a "protector"? What?—with all those loving relatives around her? With all those chivalrie friends and relations, the SEYMOURS, who can only behold a vision of her "grilling in Hell"? I am heart-sick of such hypocrisy. How thoroughly in all things his character coheres. He has a loving Mother, whom he repays with insult and abandons to misery and despair for twelve long years. He has an Aunt, who receives him hospitably at her houses—and he makes her his mock and jest whenever he has a chance. He has a Father, whom he treats with scorn. He has a Cousin, whom he seduces; and about whose subsequent condition he makes no enquiry. He has in Miss BRAINE a friend as true, as faithful as ever lived; and he does not even pretend to regard her. Other phases of the same kind will readily present themselves to your recollection. How vain, therefore, is it to talk, as Mr. HAWKINS has done, or will do, about any true feeling being in his heart—about "the friends of his youth"—for whom he cared as much as Mr. MICAWBER;—about Abbé SALIS, and CHATILLON, and D'ARANZA, and STRICKLAND, and all those others to whom his soul was linked; but for whom, I submit to you, he never had one particle of affection, or friendship, or even liking.

Gentlemen, I am really tired of considering the number of guesses and speculations which arise in this Case. The *Baronetage* is supposed to have been read. The *Illustrated London News* is imagined to have been carefully studied. PETITT SMITH—I wonder if he is a brother of STORES SMITH?—gives a flourishing account of one SLATE, a Hampshire pauper or peasant of astounding acquirements, probably a person deeply versed in theological lore, and in the most abstruse riddles of divinity: and this SLATE is surmised to be another BOGLE, or BAIGENT, or ONSLOW, who has the whole history of the Family at his fingers' ends. Knowing that ROGER was slim, he goes to the Defendant, who is fat; that ROGER was dark, brown-haired, and that the Defendant has an auburn, almost of scarlet colour; that ROGER was short, and the Defendant tall; in a word, knowing the utter absence of likeness between the two, he goes and coaches him up in a complete encyclopædia of knowledge. This happened somewhere in August, 1865, according to the cross-examination, page 773. But if he *did* coach him up then, in all the histories and mysteries of the TICHBORNE and DOUGHTY families and estates, how is it that the Defendant exhibits ignorance to Mr. GIBBES and others later on in the autumn of the same year? SLATE coached him or he did not. If he did, what is the result of the coaching? Ignorance. Yet you are asked to assume that SLATE was a MACCANN, or CARTER, or ONSLOW, or RIVERS, or WHALLEY. Where is SLATE? These men have gone to the ends of the earth for Witnesses. Where is SLATE? Here is the man who taught my Client the A, B, C, the rudiments, the grammar, nay, the whole Case! Where is he? SLATE! SLATE! SLATE! Where art thou? Echo answers, Where art thou?

Note again how they harp upon "my Grandfather," "my Uncle." These drowning men catch at straws. Why, in one of the Stonyhurst letters occurs this passage:—

"*There is no end to what you say against my Uncles and Aunts. You always charge them with a host of things that never happened.*"

Mark the words, Gentlemen of the Jury! "My Uncles"! What have we been told—what has been sworn in this Trial? Why this: that ROGER TICHBORNE never called the SEYMOURS his Uncles. The connection was kept a secret. There was a sort of shame about it; and it was never alluded to. Here is his own letter, which gives the lie to the assertion. Here the phrase, "My Uncles," is used familiarly—as if it were one of common occurrence. Note also the next passage! Does it not prove conclusively the ill-feeling that existed? Does it not shew why the mother persistently interdicted her son from coming into contact with those Uncles and Aunts, whom her own son charges her with belying?

And now, Gentlemen, I come to the extraordinary circumstances under which it appears ROGER TICHBORNE was smuggled on board the 'Bella.' The reason given for his being so put on board is that he had no passport. But I want to know why he could not wait for a passport. The harbour was full of vessels, and it did not appear that the 'Bella' was the only ship going to New York. Why he should have been smuggled on board can be easily understood if you accept the evidence given by me on that point—that he got into bad company, was regularly cleaned out of money, and was unable to pay his debts. I can understand ROGER TICHBORNE, having no money, wanting to go away in that manner; but I cannot understand ROGER TICHBORNE, with plenty of money, consenting to do so.

The LORD CHIEF JUSTICE: Who says he had lost all his money?

Dr. KENEALY: Captain BROWN.

Mr. TAYLOR (Juryman): Oh! (Loud laughter.)

Dr. KENEALY: Evidence has been given that he lost all his money to OATES and BURKETT.

The LORD CHIEF JUSTICE: Did he say that he had lost all his money?

Dr. KENEALY: I don't think he said he examined his pockets to see whether he had any money left; but the fair and reasonable inference from his statements is, that some persons had got hold of his money amongst them, and that his departure was a necessity.

The LORD CHIEF JUSTICE: I know it was said he had not the means of paying his passage.

Dr. KENEALY: The tendency of the evidence is to show that he had little or nothing.

The LORD CHIEF JUSTICE: The Defendant himself said that he paid for his passage, and had £30 to spare, which he left in the cabin.

Dr. KENEALY: I want to know how this very quiet and chaste and prudent young gentleman could be in such a state as not to be able to pay his passage, unless it is as I suggest. It is all very well for gentlemen to say, "We don't believe Captain BROWN:" but if you don't believe his story I want to know how it could come that he was in such a condition as to consent to be smuggled on board in the way that has been described? Then in regard to Melipilla, it is said he never could have been there because he never told Lady TICHBORNE anything about it; but surely when young men are leading a wild life, and indulging their passions, they do not write home and tell their mammas every place they go to. Captain HOSKINS might have thrown some light on the state the young gentleman was in when he left Rio—and I think I have a right to ask why he was not called?

The LORD CHIEF JUSTICE: He was called.

Dr. KENEALY: Yes, but only to give rebutting evidence. He was not called in examination-in-chief; and the reason given for his non-appearance was that he was suffering from diarrhœa; but surely his diarrhœa did not last for three or four months, or it must have been a bad thing for Captain HOSKINS. (Laughter.)

Gentlemen, I now come to a reference to the Australian part of the evidence—and first of all have to refer to the map which Mr. HAWKINS said was prepared under his own direction.

Mr. Justice LUSH: It is a printed map.

Dr. KENEALY: Well, there seems to be an answer to everything. I don't know where I am; but Mr. HAWKINS certainly said it was prepared under his own direction.

The LORD CHIEF JUSTICE: That was an enlarged map that Mr. HAWKINS referred to in addressing the Jury.

Mr. HAWKINS: Yes; I remember it now.

Dr. KENEALY: Well, Mr. HAWKINS afterwards says that in 1865 the Defendant wrote in his pocket-book: "ROGER TICHBORNE, Tichborne Hall, Surrey." I think it was proved that this was not in his handwriting; but assuming it is, I would ask whether this came from reading the *Home News* or studying the *Peerage*. If it is his writing, it negatives the idea of coaching; if it is not, how came it to be in the pocket-book? In either way, it is fatal to the Case of the Prosecution in that particular. The Prosecution, as I have before said, has so many blemishes on it as not to deserve any public confidence at all. In ordinary Cases the Prosecution does not depend on such trifles and tricks. In fact, thinking over all these matters to which I have been referring, one is irresistibly reminded of the language of the French diplomatist who said: "It was worse than a crime—it was a blunder." A greater blunder than this whole Prosecution has never been presented to the country, and I think it can hardly be satisfactory to the community now watching the Case with so much interest. At present the voice of that community is stifled. But there will be a time, and that not far off, when all the things to which I am now calling attention will be taken up and agitated by a great many active and energetic minds.

The LORD CHIEF JUSTICE: I am glad to think that won't be done till the Jury have decided on the Case.

Mr. Justice LUSH: And it is not for us to speculate on what these great minds will do.

Dr. KENEALY: I don't refer to them for the purpose of this investigation.

The LORD CHIEF JUSTICE: It is a pity that you refer to them at all.

Dr. KENEALY: No; but——

The LORD CHIEF JUSTICE: What have we to do with it? We will not be deterred by it from doing our duty, or be impelled to do it.

Dr. KENEALY: I am quite sure of that.

The LORD CHIEF JUSTICE: Then why bring it in?

Dr. KENEALY: Is there any harm——

The LORD CHIEF JUSTICE: Yes; it is taking up time, and, besides, is not complimentary to the Jury.

Dr. KENEALY: What is not complimentary?

The LORD CHIEF JUSTICE: To remind them that there are matters which will be at work, in connection with this matter, after they have given their verdict.

The FOREMAN: Our time is of considerable consequence to us, and we wish to be relieved as soon as we can be.

Mr. Justice LUSH: I am anxious that Dr. KENEALY should come to the main points of the Case.

Dr. KENEALY: I must storm the outworks first.

The LORD CHIEF JUSTICE: Storm them if you can; but don't introduce the outside public to storm them too.

Dr. KENEALY: It is my first allusion to the public.

The LORD CHIEF JUSTICE: No; we have had it all through. Besides, the history of all this is to be written. (Laughter.)

Mr. TAYLOR (Juror): And, like many other things, it is not complimentary to us.

Dr. KENEALY: I am sorry that any of the Jury regard what I have said as uncomplimentary to them. I must now refer to another thing in the Prosecution which, in my opinion, has signally failed, and that is the evidence which refers to the gold fever in Australia, and the presence of the 'Osprey' there. I am sure you all remember the reliance that was placed by the Prosecution on two facts—first, that there was no gold fever in Melbourne in 1854, and secondly, that there was no such vessel there as the 'Osprey.' They considered it one of the most salient points in their Case to negative anything about the gold fever, therefore it was they put even a Cabinet Minister (Mr. CHILDERS) into the box. One of their own Witnesses, however, Mr. STEWART, said in cross-examination, that in 1854 there were a great many deserters going to the diggings, and that it was a common thing for a whole ship's crew to desert. That is exceedingly strong evidence, and is evidence furnished by the Prosecution themselves. The first evidence we offered was the evidence of EDWARD ANDREWS, who was examined on the 5th of September. He said he landed at Melbourne in November, 1854, when there was considerable excitement in the town of Melbourne, and the gold fever was so great they were not able to get lodgings on the night of their landing. He was not cross-examined, and his evidence was accepted without any opposition. The next Witness upon this point is FRANCIS BOUCHIER, a retired officer in the merchant service. He was in Melbourne in June, 1854, and remained there till August. He said that during June, July, and August, there was a gold fever, and much difficulty was experienced in getting men to man the ships. A chief officer was getting £100, and men from £40 to £50 for the run home. Then the matter still goes on, and my lord says, "I think what this gentleman means to say is this—there cannot be a doubt about it—there was a difficulty in getting sailors for the homeward voyage." Then the Witness said, "In the early part of 1855 I met them coming up in regular gangs, all going to the diggings, and there were ships homeward bound that could not get away." The next Witness on the question of the gold fever was FREDERICK BULLOCK. He was examined on the 17th of October. He was in Melbourne in August, 1854, and says that the ship in which he arrived, the 'Morning Star,' was not boarded by any Custom-House Officers whilst he was on board. He speaks of the gold fever, and of the difficulty of obtaining sailors, stating that £16 per month were offered for the run, and refused. Then as to the 'Osprey,' Mr. R. G. BIGGS, an accountant, was called, and gave similar evidence, at the same time particularly describing the 'Osprey' which he saw. He says that she was a vessel exceedingly difficult to give a technical name to, owing to the peculiarity of her mast and rigging. She was Swedish built, and had great breadth of beam. Mr. BIGGS has an absolute and perfect recollection of everything connected with the 'Osprey.' If I can establish the fact of there being a gold fever, and the presence of the 'Osprey' there at that time, it will go far to substantiate the Defendant's narrative. Now this Witness BIGGS, who was examined on the 24th of October, said that he arrived at Melbourne in June, 1854, and remained there to the end of July or the middle of August, and that such was then the state of the gold fever that the average amount paid to able seamen for the voyage to England was from £40 to £50. With regard to the 'Osprey,' GEORGE BIGGS, an accountant, who was examined on the 24th of October, said that being at Melbourne at the latter end of July, 1854, and being in the habit of amusing himself in the Bay, he saw an 'Osprey,' which he described as a three-masted schooner, square-rigged fore and aft. There have been some discrepancies in the accounts given of this vessel by different Witnesses, and these are partly explained by the fact mentioned by this Witness, who is an accountant and careful in what he says, that she was a vessel of such a kind that no accurate description could be given of her. He said she was a three——

The LORD CHIEF JUSTICE: The difficulty in the matter is that there is no three-masted schooner square-rigged on her mainmast, as he stated.

Dr. KENEALY continued: He also described the colour of that vessel and the figure-head, and said that she was a foreigner. If, Gentlemen, you are of opinion that there was an 'Osprey' at Melbourne at that time—and a great number of Witnesses have stated that there was—that will go a great way towards establishing the identity of the Defendant and the reality of his story; and I don't hesitate to hope that you will find the balance of the evidence strongly in favour of the arrival of such a vessel at Melbourne in July, 1854.

A JURYMAN: You have not shown us where that 'Osprey' came from.

The LORD CHIEF JUSTICE: You have certainly relieved your Case from this difficulty—that up to the production of that evidence one of the strongest arguments against the Defendant was that there was nothing to show that there had been an 'Osprey' at Melbourne, except an 'Osprey' of only 70 tons burden. You have cut that from under the feet of the Prosecution by producing evidence that there was an 'Osprey,' and have thus relieved your Case from considerable difficulty.

Dr. KENEALY: I am much obliged to your lordship for that observation; and if it be that I have so succeeded, what must be thought of a Prosecution, which for so long a time endeavoured to persuade *you* that there was no truth in the arrival of an 'Osprey'? Judge of all by this one act. They are fighting for money and estates; it seems to me they care not how they win them. One false Witness after another turns up. *Uno avulso non deficit alter.* Avarice—an inordinate greed for gold is at the root of all their doings—probably there may be a little feeling of revenge as well. They seem to heed not public opinion so long as they hope to ruin.

Populus me sibilat: at mihi plaudo,
Ipse domi, simul ac nummos in arc contemplor.

This feeling blinds them apparently to all consequences. But between them and their aspirations is our English Jury. That Jury system which has stood bravely between kings and those whom they sought to oppress—which secured the liberties of England in the Trial of the Seven Bishops—in that system I fix my faith, and I confide in you, as representatives of its grand traditions.

Gentlemen, one further remark before I sit down. We are told by LAMARTINE, that the last words of Madame ROLAND as she gazed from her scaffold upon the colossal statue of Liberty, which rose as it were in mockery before her, were these: "*O Liberty! Liberty! how many crimes are committed in thy name!*" Take care, I beseech you, that in other days, when all the passions of the moment are dead, when Cabinet ministers and the like are passed away; when its mean and miserable prejudices have gone to the tomb, and are buried with corruption, that curious contemplators of this wretched Trial may not with similar bitterness of heart cry out, "*O Justice! Justice! how many dreadful wrongs are committed under thy sacred name!*"

[It being a quarter to four, the Court then adjourned till half-past ten on Monday morning.]

OUTSIDE THE COURT.

The fog was extremely dense at the rising of the Court, and there were but very few loiterers to see the notabilities of the Trial take their departure.

ONE HUNDRED AND FORTY-FIRST DAY.—MONDAY, DECEMBER 15TH, 1873.

Dr. KENEALY: May it please your lordship: Gentlemen of the Jury. When we adjourned on Friday last I think I was dealing with the evidence of the Witness Mr. BIGGS,* and had just begun to examine the testimony that he gave. He said that in the latter end of 1854 he was in Melbourne, and that he had no particular occupation, except to go about and amuse himself, and he speaks distinctly of the ship 'Osprey' being at that time in Melbourne Harbour, or Hobson's Bay. That he must have seen her you will entertain no doubt, because he actually gives a description of her in a very few words. He is asked, "How would you describe her?" "I would be inclined to think she was a three-masted schooner, but with square rig." He added that both the aft masts were square-rigged.

The LORD CHIEF JUSTICE: Both the aft masts square-rigged?

Dr. KENEALY: It is so.

The LORD CHIEF JUSTICE: *That could not be, or she would be a ship.*

Dr. KENEALY: He was asked, "Do you believe the masts fore and aft were square-rigged?"

The LORD CHIEF JUSTICE: Did he say "Yes"?

Dr. KENEALY: Yes. He describes her as having been Swedish built, painted green, and having a large house on deck between the fore and the mizen masts; her deck was rather low, and he believed the vessel had a round stern. Her figure-head was either a billet-head or a fiddle-head. He had a distinct recollection of the vessel, and spoke positively as to her. He said he remained alongside her only a few minutes, but he had a clear remembrance of her; and he also remembered that he hailed her, though he got no answer. His attention was attracted—and this is most important—to a group of men who were on board the 'Osprey' standing by the side of the ship. If you assume, as I ask you to do, that this 'Osprey' picked up the crew of the 'Bella,' then you can well understand who these men were. They appeared, he said, to be sailors, and were consulting together. There were about seven or eight of them. You are aware that, by the rules of evidence, even had the Witness been present at the consultation, I could not have asked him what the men said of themselves. You can only draw your own inference as to whether they did not belong to the 'Bella,' and were not consulting as to the steps they ought to take. In the afternoon of the same day a very important circumstance occurred. The Witness saw a crowd of people surrounding a group of men, which cor-

*Vol. VI., pages 341-343.

responded with the group he had seen on board the 'Osprey.' He understood that they were shipwrecked sailors, and the people were subscribing for their relief. You are, therefore, at liberty to assume that these men came ashore from the 'Osprey.' There are good and kind-hearted people in every place, and a shipwrecked sailor excites great sympathy in the heart of every Englishman. You will be justified in assuming that these were shipwrecked sailors obtaining relief, although I am not in a position—owing to the laws of evidence—for offering you positive evidence on the subject. The Witness speaks also of a gold fever raging all through the year 1854, and, in contradiction to Mr. CHILDERS'S notions, adds that many ships were obliged to lie up, unable to proceed to sea from want of crews. You are asked by the Prosecution to believe that there was no 'Osprey' of large tonnage in Hobson's Bay in 1854, because there was no entry to that effect in the Custom-House books, but the evidence has effectually disposed of that supposition. The Witness, in the exercise of the discretion of Mr. Serjeant PARRY, was not cross-examined. You remember the manner in which Mr. BIGGS gave his evidence, and I think you will come to the conclusion that he was a Witness of truth, and one whose statements are thoroughly to be relied on.

A JUROR: Did Mr. BIGGS see the name of the vessel?

Dr. KENEALY: I think he said so. He was asked "What was the ship?" and he replied, "The 'Osprey.'" He was not asked by Serjeant PARRY whether he saw the name or not.

The LORD CHIEF JUSTICE: I thought you said just now he saw a man on board.

Dr. KENEALY: Yes; he said that. Mr. Justice LUSH asked him on board which vessel, and he said the 'Osprey.' We may conclude, therefore, that he saw the name.

A JUROR: Can you give me the day he was examined?

Another JUROR: The 24th of October.

Dr. KENEALY: The next Witness to whom I shall call your attention is GEORGE NASH, a superintendent of works, who arrived at Melbourne in July, 1854, and remembered going on board a barque-rigged vessel called the 'Osprey.' And he described her as Mr. BIGGS did. There may be some minor discrepancies in the evidence of the various Witnesses, but you will bear in mind that they speak of matters occurring 19 years ago. They all agree in this, that there was an 'Osprey' in Hobson's Bay, a three-masted vessel, in 1854. That is the grand fact I wish to establish. This Witness was, he says, on board the vessel for twenty minutes. She was nearly 400 tons burden, and about 150 feet long between the perpendiculars. Upon the gold-fever question he agreed that it existed in July, 1854, and for some time after. There were several rushes to the diggings of all classes, and many crews of vessels deserted, so that sailors could with difficulty be obtained for the homeward run. The next Witness that I shall refer to is RICHARD GOODYEAR, a licensed victualler and pensioner of the Royal Sappers and Miners. His evidence is important, for he swore that on a certain day in July, 1854, the captain of the 'Comet' ran the tug on board of which he was close to a three-masted schooner in Hobson's Bay, and took several persons from on board her, whom he put ashore. He added that they were all dressed as sailors, except one who was in plain clothes, and appeared to be a person in a different position from the rest. He is evidently a man of conscientious feeling; for when asked had he any recollection of the appearance of the man, he said not the slightest; except that he was different from the others. I think you will entertain no doubt that the ship he spoke of was the 'Osprey' on which the previous Witness had seen the seven or eight men consulting. He says that one man he spoke of appeared to be twenty-eight or thirty. ROGER TICHBORNE was not that age then, but what he had undergone might well give him an appearance of age. This Witness likewise spoke of rushes to the diggings, and his evidence is important on both points. Then we have Mr. PETER NICHOL RUSSELL, a merchant, a gentleman, who is entitled to full and entire credence. He speaks to having seen two 'Ospreys' in Hobson's Bay, either in June or July, 1854—one being the little Scotch schooner, the other a large three-masted vessel from 300 to 500 tons. He purchased the smaller 'Osprey' and went on board; he noticed the house, and that she was painted black, and had a round stern. He, curiously enough, is, I think, the only Witness who speaks to seeing the white figure of a bird on the bows.

The LORD CHIEF JUSTICE: Yes, he is.

A JUROR: He does not speak to the name.

The LORD CHIEF JUSTICE: You see that does not agree with the other; but one might remember one, and the other not; *or imagination might have been at work.*

A JUROR: Did he see the name?

Dr. KENEALY: He speaks of her all through as the 'Osprey,' and says she had for her figure-head a white bird representing an osprey.

The LORD CHIEF JUSTICE: *In that he does not agree with the other Witnesses.*

Dr. KENEALY: No, my lord, he does not. I am glad that my Witnesses are not all "in a tale." Those for the Prosecution are. This Witness says a billet-head or figure-head, but he says that his own little 'Osprey' had, he believed, a seabird for a figure-head, and he may be confusing the one with the other. He says, as the others do, that the large 'Osprey' was a three-masted schooner. He was on board of her between a quarter and half-an-hour. You can have no moral doubt, Gentlemen, that this was the 'Osprey'; for he says, "I went on board from curiosity, because she was the same name as the vessel I had purchased." His own little 'Osprey' had, as I have said, a seabird for a figure-head; and that may have given rise to his impression that the larger vessel had a similar figure-head. That there existed a gold fever and rushings to the diggings is also made clear by the positive evidence of this Witness.

The JUROR: He said that passengers constantly left Melbourne for England.

Dr. KENEALY: Yes, sir, but I do not lay any particular stress upon that. Although the Defendant spoke of it, you will, I think, pay very little attention to it. He had been leading a wild life at Rio, and had sunstroke in the boat of the 'Bella,' and I contend that his intentions were to lead an entirely different life from what he had led in this country—a wild life, a life of excitement. With new bodily strength new powers and passions were excited, and he resolved to exercise them. Do not, therefore, suppose that he would have returned to England if there had been ships and crews. His assertion on the subject, like hundreds of others he has made, was loose and reckless, and for my part I pay no attention to it. I use the evidence I have referred to simply to show that a gold fever existed.

The LORD CHIEF JUSTICE: Of what value is it if it be not to show that there was great difficulty in getting a passage home?

Dr. KENEALY: I use it in this way, my lord, to show that if the Witnesses who said there was no gold fever at that time are mistaken as to that, they may likewise be mistaken as to there being no 'Osprey' in Hobson's Bay.* It weakens the force of their testimony.

The LORD CHIEF JUSTICE: I quite understand.

Dr. KENEALY: The next Witness, Gentlemen, was Mr. LIARDET, who filled several respectable positions in Melbourne. He says that in July, 1854, the port was full of ships, and crews were daily deserting. If so, you can understand the confusion that prevailed, and that all the arrivals were not registered. He gave a wrong date, as has been shown, about Sir CHARLES FITZROY; but how can any person be expected to speak with strict accuracy as to events which occurred twenty years ago? He says his attention was directed to a certain fine-looking craft. He went on board, and only saw one person there. He was told on board that the vessel was the 'Osprey,' and that she came from South America. That does not mean that she came from a South American port, but in the loose language of a sailor, from that direction—which she did, if the statement of the Defendant be true. This gentleman also spoke of rushings to the diggings, and as Clerk of the Peace and Commissioner of Crown lands he was in a position to know whether a gold fever existed all through 1854, and he added that he had the greatest difficulty in keeping even his policemen from going to the diggings. Their pay and allowances had to be increased to induce them to remain. Mr. LOCKHART was next examined. He was a manufacturer from Kircaldy, and certainly, if there be any nation not likely to make mistakes in the giving of evidence, the Scotch are entitled in that respect to pre-eminence. Mr. LOCKHART states that the captain of the 'Comet' drew his attention to seven or eight men whom he had taken from a vessel which he described, and which you cannot doubt was the 'Osprey.' The rules of evidence would not permit my getting out what was said by them or about them. He said they were dressed in a nondescript style, as shipwrecked sailors would be—like sailors who were hard up—not dressed in fine go-ashore clothes. The Witness spoke of the gold fever and of the bustle and confusion and consequent irregularity which prevailed in the Customs and in business generally. Ships came in, he said, in great numbers, crews deserted, and many of the vessels had to lie in the bay during the whole of 1854. Mr. LOCKHART said he addressed the Captain, and from his speech he concluded he was a Welshman.

The LORD CHIEF JUSTICE: Is that the Captain of the 'Osprey,' or the Captain of the shipwrecked lot? He is speaking of the Captain of the 'Osprey,' is not he?

Dr. KENEALY: I will try and find out.

The LORD CHIEF JUSTICE: I mean the man who he thought spoke like a Welshman.

Dr. KENEALY (reading): "Did you have much conversation with the one who was a Captain? Do you mean the Captain, or simply a Captain?—A Captain." He does not assume that he was the Captain. So that leaves it in doubt whether he was the Captain of these particular men, or the Captain of a ship.

The LORD CHIEF JUSTICE: Which makes all the difference; because, if he was the Captain of the shipwrecked men, they could not have been the men of the 'Bella,' because that Captain went to the bottom in the boat of the 'Bella,' *according to the Defendant's account.*

Dr. KENEALY: It is not stated what Captain it was.

The LORD CHIEF JUSTICE: Therefore I assume it must have been the Captain of the 'Osprey'; otherwise it would negative the possibility of its being the 'Bella's' crew.

Dr. KENEALY: Therefore it must have been the Captain of the 'Osprey.' If it were the Captain of the 'Osprey,' it is singular that he should speak of him as OWEN.

The LORD CHIEF JUSTICE: It could not be the Captain of the

* The evidence proving that there was an 'Osprey' in Hobson's Bay appears in Vol. VI. of the *Trial.*

'Bella,' and it has occurred to me that it is capable of a twofold construction.

Mr. Justice Lush: He says "They were seafaring men, and I had conversation with one who was a Captain."

Dr. Kenealy: I think the tendency of the evidence is to show he was not their Captain, because the distinction is put clearly between the terms "their captain" and "a captain," and he adopts the words "a captain."

The Lord Chief Justice: What I understand by that is that the man would not pledge himself to what vessel he belonged, but that he was a captain.

Dr. Kenealy: It is capable of two constructions, and I ask you, Gentlemen, to put upon the evidence the construction which is favourable to innocence, not one which is favourable to guilt, and to say that it was the Captain of the 'Osprey,' the Welshman, whom the Defendant called Louis Owen. The next Witness was Mr. Francis Longland, agentleman living on his own estate here in England. He was in Melbourne the whole of 1854, and swore he went on board the 'Osprey,' a three-masted schooner. There were, he said, hundreds of vessels lying in the bay at the time—about the middle of the year. He spoke, he said, to three sailors who went on board the 'Osprey' with him, and who gave him an account of themselves, which, however, was not receivable in evidence. This gentleman kept the three men at his own house for two or three days, and gave them food and clothes, for they were destitute, having been wrecked and having lost everything. Asked about the gold fever, he confirmed the statements of the other Witnesses by saying it was still going on, but was diminishing. It was, however, he added, at its height in July, 1854. Mr. Frederick Tizard, a sailmaker, was the next Witness. He was at Melbourne in June and July, 1854, and remembers casting anchor in Hobson's Bay. He noticed a three-masted schooner while on board his vessel, the 'Queen of the South,' in which he sailed as quartermaster. The vessel was painted a dark colour, and was called the 'Osprey.' She showed the American flag, and he swore distinctly that he read the name himself. The gold fever, he said, was then at its height, and twelve of the crew deserted. They had to employ landsmen—navvies—in their places, and the sailors had to give security that they would not desert, but would return with the ship. The Customs, he said, at that time were not particular, for no Custom-house Officer boarded his ship. The next Witness was Daniel Shandley, also a sailmaker. He was on board the 'Queen of the South,' as boatswain. This Witness also saw the 'Osprey' in July, 1854, in Hobson's Bay, and described her as a three-masted schooner or a barque dismantled. All this evidence establishes, I submit, that this was the 'Osprey' and the vessel described by the Defendant. Crews, he said, were deserting in all directions; and he agreed with the last Witness that no Custom-house Officer boarded the ship in the bay. Edward Godrich, engaged in the firm of

LAMARTINE.

Godrich and Co., wine merchants, of Winchester, was the next Witness. About September, 1854, he says he received a quantity of American goods into store in Melbourne for the 'Osprey.' The goods were all marked with the name 'Osprey.' He may be mistaken about the month, but he could make no mistake whatever as to the name of the ship. About that time, he said, he was asked to subscribe for shipwrecked sailors, and did so. I think you will entertain no doubt that the sailors referred to were the same group of men who had been seen on board the 'Osprey,' and for whom people collected money on shore. There were, the Witness said, at that time rushes to the gold-fields, and with regard to the Customs, there was a great rush of business into the bay. Consignees had great difficulty in receiving their goods in consequence of their having more business than the Government had staff to do it. The 'Osprey,' he said, came into the hands of his employers and was dismantled, cut down, and used as a large lighter. You will, I think, be satisfied that this was the same vessel which picked up the men from the 'Bella,' and which was subsequently parted with in Melbourne. A Witness who had belonged to the quarantine boat 'Lizzie' at Melbourne said he was in the boat in the year 1854, his particular duty at that time being to steer the craft. The boat was employed to convey the doctor to all vessels coming into the Port, and he remembered going with it to the 'Osprey' at about the middle of 1854. The name of the vessel was painted on her quarter. She was foreign built—either an American or a Norwegian—of about 400 tons register, and carried three masts. She had a "fiddle" or "billet" figure-head to the best of his recollection. The doctor went on board, he said, and remained about twenty minutes. A group of men from the vessel—from five to eight—spoke to the boat's crew. Now, Gentlemen, can you doubt that that was the same group of men alluded to by the last Witness? The Witness goes on to say, "The men on the vessel made a request to us that we did not comply with." The rules of evidence prevented my getting out what that request was. Mr. Serjeant Parry asked him whether any circumstance occurred in 1854 to fix the date in his mind, and he said that he remembered the year because he was presented with a cup at about that time, upon which the date was engraven. The next Witness to whom I will call your attention was George Mallinson. He was examined on the same day as the Witness from whose evidence I have just quoted. In 1854, he says he was in Melbourne, which place he left in 1855. Most decidedly there was a gold fever raging in Australia in 1854, and he had an intimate knowledge of the difficulty experienced by captains of ships in getting crews. A number of the men, he says, ran away from

the ship in which he went over—namely, the 'Queen of the South'—on her arriving at the colony. His attention was drawn to a vessel called the 'Osprey' in the latter end of July, 1854. She was a three-masted schooner, and had a white deck-house. He said, "I read the evidence of Mr. Childers in this Case, and it was this circumstance which induced me to come forward." George Bell, examined on the 23rd October, said, "I got to Melbourne in 1854, but when we arrived there no Government Officer came on board. At the latter end of July my attention was particularly drawn to a vessel called the 'Osprey.' She was a slavish-looking craft, and we used to call her 'the slaver,' owing to her appearance. She had long rakish masts and flew the American flag. I should call her a schooner—a fore and aft schooner." This Witness gave particulars concerning the rig and the name of the vessel, which he said was painted on her quarter. I beg you to bear in mind that this Witness was at the diggings eleven years, but never heard of a place called "Nowhere Else."

Gentlemen, did Roger Tichborne land at Australia in the 'Osprey'? I submit that I have given you strong evidence that he did. If so, why did he not communicate with home? There the mystery begins. Did Roger go into the bush and meet the Defendant there? Did he die, or did the Defendant, having learned his secret, kill him with the design of appearing in his place? Did the man who bore *no* resemblance to Roger, who had none of his marks, who had red hair, who was tattooed, who differed from him in a hundred ways, conceive the improbable, the astounding idea of personating an individual from whom he was as different as light from darkness? I mention the matter to shew its absurdity. If you are persuaded that Roger landed, and never wrote home, then I say the proof is powerful that this is Roger. Any other conclusion would but drift you on a wild sea of speculation. On that voyage Mr. Hawkins may invite you; but every principle of justice and of common sense demands that you should never speculate where you have proof.

But the value of this evidence as to the 'Osprey' does not end here. In 1854 Arthur Orton is sworn to by that respectable lady Mrs. Mina Jury as being at Hobart Town. How then, if this gentleman be Arthur Orton, could he know of a shipwrecked 'Osprey' crew landing at Melbourne at the same time? Does not this fact prove that Mina is wrong? It is of immense consequence, therefore, that you should weigh this evidence well—but as I invite you, in favour of my Client. I regard it as strong proof that the Defendant was at Melbourne in that year, that he knows of an 'Osprey' and of a rescued crew that were there, and hence it is that they have put even a Cabinet Minister into the witness-box, to weaken, if they can, this all-convincing fact.

True it is, that the narrative which my Witnesses have given on the subject of the 'Osprey' as she came to Melbourne, is not one and the same in all particulars. But this proves it is not a got-up fiction. See how beautifully the tale of Mrs. Fairhead and Mrs. Jackson coheres. How perfectly Gosford agrees with all the letters! How admirably Lord Bellew and Mina Jury and Hopwood tell their stories. Remember Mr. Stores Smith, who repeated his recollections dramatically, graphically—as if he had gotten them off by heart. My Witnesses are not drilled, or have not drilled themselves in this manner. They have no diaries or memorandum-books. Their narratives differ here and there, as they must do after a lapse of twenty years. They do not agree upon the hour, or the day of the week, or month. Immediately a shout of triumph is raised. On all sides we hear of dates, dates, dates. I sometimes liken myself to a man of whom I once read, who, walking through a wood, was pelted to death by the monkeys with *dates*. (Laughter.) Pardon the pun: but I really cannot meet such nonsense with a grave face.

Gentlemen, this is the whole of the evidence that has been offered on behalf of the Defendant as to the 'Osprey' and the gold fever, and I shall now call your attention to the evidence given on the part of the Prosecution on the same subject. I tell you at the outset that I think you will find that the Case of the Prosecution is as weak as it can be as to the non-presence of the 'Osprey' in Hobson's Bay, in 1854. The statement made by the Defendant to Mr. Hodson, and repeated by that gentleman in evidence, is strongly corroborative of the evidence I have been reading from. No doubt a great deal will be made of the Defendant's going to Liverpool to hunt up the vessel which rescued him, and of his eventually coming to the conclusion that it was the 'Themis'; but I shall ask you to bear in mind that his earliest impression was that the vessel was named the 'Osprey.' He mentioned that ship long before he ever heard of the 'Themis,' and Mr. Hodson says he repeated the name of the 'Osprey' over and over again on board the vessel coming home from Australia in the year 1866. Mr. Hodson's evidence, therefore, does not do them any good, as it confirms the evidence as to the existence of an 'Osprey' in 1854, given by my Witnesses. Mr. Telfer only speaks of an 'Osprey' of 66 tons, so he also does their Case little good. Mr. Gardiner is their next Witness, but he only speaks to having made a search for the 'Osprey' at Lloyd's, and having failed to find it. This is not material in the face of the numerous Witnesses who swear to the vessel. Mr. Killey's is the next evidence I have. I would point your attention to a letter written to him as early as February 10th, 1867, which is important, inasmuch as it shows that the Defendant at that date was under the impression that he was rescued by the 'Osprey.' This, therefore, disproves the theory that the 'Osprey' was an afterthought of my Client's. Mr. H. Cooper, also called for the Prosecution, speaks of an 'Osprey' arriving at Melbourne on the 10th of May, which clearly could not be the one spoken to by my Witnesses, but this statement is not damaging to me, and he goes on to give valuable evidence in my favour. He states that in 1853 and 1854 the gold fever was so strong, that many sailors deserted from their ships to go to the diggings. Nothing, in short, can be so wretched as the evidence they produced to disprove my Case with regard to the 'Osprey,' and to show that it was an afterthought. Mr. Prickman, another of their Witnesses, speaks to seeing an 'Osprey' in March; but that does not help their Case so very much, so far as I see; and Mr. Sumner's evidence is equally valueless, for he only speaks to seeing a three-masted 'Osprey' in February, 1854. Had these Witnesses stated that they were at Melbourne at the date at which my Witnesses say the 'Osprey' was there, then their evidence might have been material. But they do not. Other Witnesses—amongst whom is Mr. Purcell—speak to a search being made for the 'Osprey' in the official books at Melbourne, and the obligation on the part of the Emigration Officers to board all vessels arriving at that port; but they disprove nothing that my Witnesses have advanced. That is the whole of the evidence—one the one side, the result of observation and actual personal communication and conversation with persons on board the 'Osprey,' which is real evidence, because the Witnesses are sure of what they are describing; and on the other, the result of mere speculation. The evidence for the Prosecution is, in effect, that certain things ought to be done according to law, and, because those things were not done, there was no 'Osprey.' I hold it to be absolutely impossible for you, on the subject of the 'Osprey,' and the gold fever—as in the Case of Miss Hales and the tattoo—to accept the evidence of the Prosecution in preference to that given in behalf of the Defendant. The evidence I have called on those points is as strong as ever was produced in a Court of Justice before any tribunal in the world. It is a point on the other side that none of the men from the lost 'Bella' ever applied for whatever wages might be due to them, but the answer to that is easy. Some of them may have made money, but in the excitement of the gold diggings none of them would be likely to put themselves to the trouble of establishing their identity and going through the legal forms necessary before they could get the few pounds owing to them. That argument, and the speculative kind of evidence which has been offered to you, crumbles away like ice before the sunbeams in the mass of evidence that I have produced. I will not say more on this point. I leave you to consider it, with the strongest hope and conviction on my mind that you will come to the conclusion that among the many delusions on the part of the Prosecution, that of the 'Osprey' and the gold fever is the most striking. The mention of the 'Osprey' leads me to the mention of Jean Luie. I will touch on that and have done with it, because the man is awaiting his Trial, and I do not want to say anything which would cause a prejudice one way or the other. If anything can be clear to you at all it is this: that up to the very last moment those who are the advisers of the Defendant had implicit faith in Luie. That may reflect upon their judgment, but the whole course of conduct that was pursued by myself and those persons who were more immediately in contact with the Defendant, demonstrated faith and belief in the man Luie. I did not give him up until the very last instant. I it was who challenged the evidence that was given subsequent to the charge of impostnre being first brought against him. You will remember that the whole Case was closed on the Friday; but on that day Mr. Hawkins was in possession of further evidence; at all events he brought Witnesses here. You remember the scene which occurred on the rising of the Court.

The Lord Chief Justice: *I understood they were not brought down here, but that they came of their own accord.*

Mr. Hawkins: I was not aware of their presence here on the Friday.

The Lord Chief Justice: That appeared to me to account most fully for any haste or precipitancy.

Dr. Kenealy: I lay no stress upon the word "brought." I do not know whether they were brought or whether they came, and I will accept it, if you like, that they came. Gentlemen of the Jury, they all voluntarily came—inspired by the noblest spirit of justice. This was on the Friday; therefore there was ample opportunity for the Crown to consider and consult before the following Monday, and to decide as to what course they would pursue with regard to Luie. You know that they arrived at the conclusion not to offer any further evidence with regard to him. As I say, it may have been a great error of judgment of mine and those who were more immediately around the Defendant, but we had that faith in Luie that we challenged an inquiry into his life by bringing our motion for Contempt against Mr. Pollard before the Court. Now, we certainly should not have done that if we had had the least idea that the man was deceiving us. We were under the impression that the evidence they brought from America was not so strong but that it could be met as a case of mistaken identity. I never for one moment suspected that anything had happened in the former career of this man which would lead to such a conclusion as that to which his case eventually came when I stood here with an affidavit in my hand challenging an inquiry, and bringing a motion for Contempt before the

Court. Were we not justified? Assuming, for the sake of argument, that all that their Witnesses have sworn to against LUIE in this Court is true, is it not a perfectly astounding thing that a man of that class—a conscious ticket-of-leave man, who must have known that the eyes of the whole country were turned on him in consequence of the striking nature of the evidence he gave; his photograph being exhibited for sale in shop-windows all over London, as many of you must be aware from your own observation—is it not an astounding thing, I say, that this man should go regularly to receive his stipend from the Treasury?

Mr. HAWKINS: He was not paid by the Treasury voluntarily.

Mr. Justice LUSH: Money was offered to him, at the suggestion of the Court, as his expenses whilst he was waiting here.

Dr. KENEALY: I am not laying stress upon that point. I am not blaming the Treasury, but am only describing the boldness of the man in actually going to the Treasury to get his money. I was laying stress upon his manner generally. The way in which he answered my lord when he said he was no runaway, produced a profound impression on my mind. This man, being a self-conscious ticket-of-leave man, remained in this country, being under no obligation to do so, bound over by no recognisances, and came to this Court, knowing every eye was upon him, and that every inquiry was to be made into his past life.

The LORD CHIEF JUSTICE: *There were no means of doing that, because he had said he had just arrived in this country, and gave his address abroad.* The strong fact in your favour is that he had the folly to be photographed, his portrait being published with that taking motto underneath.

Dr. KENEALY: I am merely speaking now in justification of myself. We never could have thought that a man who did all this would have come every day to the Court, with a Detective in every passage. You saw his demeanour.

The LORD CHIEF JUSTICE: LUIE said he had arrived fresh from America in July of the present year, and he gave his address abroad, which was likely to put everybody off the true scent.

Dr. KENEALY: I never could have thought a self-conscious Convict like that would have had the folly to be photographed—a man who came down here every day, and knew there were Detectives in every passage of the Court. I could never have believed that a man who carried in his breast the secret that LUIE carried could have exhibited such a bold and fearless front.

Mr. Justice LUSH: He showed an amount of audacity that is unparalleled. (Laughter.)

Mr. TAYLOR (Juror): He had never heard of rebutting evidence, my lord. (Laughter).

Mr. Justice LUSH: No!!! (Renewed laughter.)

Mr. Justice MELLOR: *He came forward, "inspired by the noblest principles of justice."* (Great laughter.)

Dr. KENEALY: He remained for the rebutting evidence. That is what is so astonishing. I forget how long he was on his parole—three or four weeks, I think.

The LORD CHIEF JUSTICE: All the while the evidence was being obtained against him.

Mr. HAWKINS: I think your lordship put him under his recognisances for four or five weeks before the second adjournment.

Dr. KENEALY: He was on his parole before he was bound over under his own recognisances for three or four weeks, and a man like him, with his seafaring knowledge, would have had no difficulty in making his escape. That confirmed us in our conviction that what he had said was true. We challenged the inquiry; he was put under his recognisances, and you have heard in open Court that Mr. WHALLEY had such faith in him that he became bail for him for £250. He was at liberty on that very night when his fate was impending, yet he made no attempt to escape, as you would have supposed he, being a guilty man, would have done. He came back, and his bail was increased to £500, and Mr. WHALLEY even then became bail.

The LORD CHIEF JUSTICE: Mr. WHALLEY said he would become surety for £250, provided another person would be bail for the other £250. We said at the time that unless he procured a second bail he would not be let at liberty.

Dr. KENEALY: All these things are unparalleled, and I think, to some extent, they justified me and others in thinking this man was to be relied upon. But he was a man who had led a life of deceitfulness for years and years, from what we have heard of him. I beg you will take me as saying all this on the assumption that the charge against him is true, as I do not want to excite any prejudice against him.

A JUROR: He was not known at all in America. Mr. WHALLEY did not say he had found evidence in support of his statements.

Dr. KENEALY: Mr. WHALLEY gave bail for him. Mr. HAWKINS had power to cross-examine Mr. WHALLEY as to all his proceedings in America. I had no doubt that Mr. HAWKINS would do so, and that is the reason I asked so few questions in examination. Mr. HAWKINS, however, did not cross-examine him.

The LORD CHIEF JUSTICE: *That was probably because you did not examine him.*

Dr. KENEALY: Your lordship will remember that the nature of the cross-examination of the other Witnesses relative to Mr. WHALLEY led us to the conclusion that he was to be what is called "skinned alive."* (Laughter.)

*This was Master F. COCKBURN'S promise or threat to Dr. KENEALY, when he sought to dissuade him from calling Mr. WHALLEY. His Report appears in the *Introduction*, page 272. A perusal of it will show how unfounded was the notion of Mr. TAYLOR and the Jurymen that it contained "nothing in favour" of TICHBORNE.

The LORD CHIEF JUSTICE: At all events we thought you would have prepared him for the process. (Renewed laughter.)

Dr. KENEALY: My policy was to let Mr. HAWKINS cross-examine him.

The LORD CHIEF JUSTICE: *I never was more astonished than when* Mr. WHALLEY *was put into the box and allowed to go out without having given any material evidence.*

Dr. KENEALY: I was astonished too.

Mr. TAYLOR (Juror): Our impression was that he had been to America, but had found nothing in your favour.

Dr. KENEALY: I asked him especially about his Report, expecting that it would be challenged. I had no more doubt than I have of the fact that I am standing here that that would be the case. He was not so cross-examined however. I cannot tell you anything about the Report, but I can point to Mr. WHALLEY'S conduct with reference to LUIE; and you, Gentlemen, can draw your own inferences from that: and bear in mind, at the same time, that he was not attempted to be cross-examined. His name was mentioned from day to day in the Court in a spirit which said, "Only let us get one sight of WHALLEY, and we shall find the person at the very base of this Conspiracy." That was the plain and obvious meaning of the cry, "WHALLEY! WHALLEY! WHALLEY!" He was held up as a person who could tell everything, and who had only to be cross-examined and the whole thing would explode, and all the arts and artifices by which this Defence was supported would be blown up before the whole of England. He came ready to have the whole of his career in America investigated. But, although they know he went for a special purpose, and although they were aware of the fact that the advisers of the Defendant refused to put LUIE into the box until Mr. WHALLEY'S Report was received, they did not ask him a question.

Mr. TAYLOR (Juror): I think you should have known who coached LUIE. He must have been coached by someone.

Another JUROR: Was there no suspicion on your mind when LUIE stated that the Defendant had recognised him?

Dr. KENEALY: LUIE did not say that in reply to a question of mine, as you will find if you refer to the evidence. That is all I feel at liberty to say.

Mr. TAYLOR (Juror): Mr. WHALLEY was present.

Dr. KENEALY: It was not in answer to my question, and there are reasons which will at once appear to the mind of the Court why I can say no more. Now, Gentlemen, I say that the conduct of Mr. WHALLEY in giving bail for that large amount undoubtedly showed implicit faith in the man. He may have been guilty of reposing confidence where it ought not to have been reposed; yet I cannot tell you on what this faith was founded. They might have got the whole from him in cross-examination, and all things would then have been cleared up. All I say is this: that none of you will believe that a man like Mr. WHALLEY, with a public position and a private character—which, as far as I know, is entirely unassailed and unassailable—would ever have been bail for £250 for this man unless he had a good and sufficient reason. Until I heard the extraordinary mass of evidence that has been given with reference to LUIE, I really thought it a case of mistaken identity. I will tell you one of the reasons. You remember the prison photograph, which exhibited a beard of three months' growth. Contrasting that beard of three months' growth, which was little more than a stubble upon his chin, with that of the man as he appeared here, I could not believe that six or seven months after he should have had a full flowing beard. That produced a powerful impression on my mind, and I did not lose faith till the medical man had examined him. And bear in mind that it was done at my suggestion. When I heard the medical evidence it occurred to me that all notions of mistaken identity were at an end. The growth of this beard did appear to me to be remarkable.

Mr. TAYLOR (Juror): We noticed the growth of his beard between the two adjournments.

Dr. KENEALY: I did not notice it. It appeared to me that it was impossible that he should have grown such a beard in so short a time. At that time I had before me a book by Mr. AMOS, in which he speaks of remarkable cases of mistaken identity. A man was indicted for robbery with cruelty, and the woman who was robbed identified the man positively; yet when another man similar in appearance was brought before her, she was unable to say which had committed the robbery. Then there was the case of ELIZABETH CANNING, spoken of by the same author. In that case thirty-six witnesses identified the gipsy woman, tracing her from Dorset to London, whilst twenty-seven swore that they had seen her from day to day in the neighbourhood of Enfield. They were mistaken, yet this woman was said to be so extraordinary, that "GOD Almighty had not created her like." It was with these cases of mistaken identity in my mind that I cross-examined the Witnesses against LUIE much to the tedium of the Court and of the Jury. All these circumstances attending his case, the extraordinary skill and daring he exhibited, deceived me from the beginning, and deceived everybody with whom he came into contact. LUIE'S evidence has done most material and vital injury to the

Defendant's cause, because the impression will be that he was produced, and that he was drilled by somebody in the interests of the Defendant. Gentlemen, I am in no position to discover anything of that matter; but I can very well understand a state of things like this, and I submit it to your judgment and consideration. From all that we see before us, he was undoubtedly a man of great ability—wrongly directed—but he was possessed of great natural ability. He was wandering about London, and finding himself unable to get money by his former courses, he probably thought to himself if he could get up a good tale of this description he would be welcomed by those who were conducting the Case of the Defendant. In London he would have had no difficulty in getting access to the newspapers containing an account of the late and present Trials. I am reminded that he might have got that volume which is published containing an account of the first forty days of the last Trial, which is now being sold for 1s. He might have completely grounded himself in a number of material facts so as to have been able to deceive every one. In fact—what I am suggesting to you actually occurred—he brought into the office of the Defendant's Solicitor an amount of knowledge which might well have staggered everybody. Gentlemen, the marvellous is not to be excluded from all the transactions of human life. It is constantly occurring. Mr. DISRAELI says, "The unexpected always occurs." There are things which happen every day in the world which, if narrated in fiction, would never be believed. And so it was that under these circumstances it might possibly be expected, in our own experience of life, that the Steward of the 'Osprey' should turn up in London. The persons who at that time were conducting the Case of the Defendant were persons who were not at all well acquainted with the incidents of the former Trial. You know that this Defendant has been changing his Solicitors almost *ad infinitum*, and those persons, therefore, were brought into this Case without any real means of knowing the minutiæ of it. I shall be asked—indeed, the Lord Chief Justice has already intimated it—How did it happen that LUIE deceived the Defendant himself?* The only answer I can give is, that the Defendant's account of his statement whilst he was on board the 'Osprey' is true—that he really never did recover his senses.

The LORD CHIEF JUSTICE: But that is not what he said. In fact, it is that which has always appeared to me to be *the helpless discrepancy in the account the Defendant has given of himself.* He said that it was only during a certain part of his voyage in the 'Osprey' that he was not in the perfect possession of his senses, and that when he went ashore at Melbourne he was perfectly well. This voyage lasted three months, and he said that during the first two he was delirious; but that in the third he dined with the Captain, and that the day after he went on shore he started on a journey of two or three hundred miles.

Dr. KENEALY: I may be wrong, but certainly my impression is that he never wholly recovered his senses.

The LORD CHIEF JUSTICE: You read the evidence; I think you will find it strongly at variance with your statement.

Dr. KENEALY: Unless your lordship has recently looked at the evidence I venture to think you must be deceived.

The LORD CHIEF JUSTICE: I think not; but I shall read the whole of that part of the evidence to the Jury.

Mr. Justice LUSH: Besides, he recognised LUIE the moment he saw him.

Dr. KENEALY: That is what LUIE swears.

The LORD CHIEF JUSTICE: And he was allowed so to swear without contradiction.

Dr. KENEALY: Does your lordship hold that Counsel is bound to start up and corroborate or contradict everything that his Witness or his Client may choose to say?

The LORD CHIEF JUSTICE: I don't say that at all. Still the statement was received without any check whatever.

Dr. KENEALY: I do not know how *I* could check him. I never saw such a thing done by Counsel.

Mr. Justice LUSH: It was a long time before LUIE was brought forward at all, and there was plenty of time to take down and consider his evidence.

Dr. KENEALY: No doubt his evidence was taken down. Indeed, a special ambassador was sent to America respecting him before he was put into the box. There can be no question that the greatest care was taken with regard to his evidence.

Mr. Justice LUSH: It is just that which seems to me so extraordinary. The Defendant having been for three months on board the 'Osprey,' and nursed by LUIE, you thought it necessary to send out to America to see if LUIE'S tale was true. That strikes me as most extraordinary.*

Dr. KENEALY: It is extraordinary; but Mr. WHALLEY went to America to do that, and to see if he could find confirmatory evidence. We felt that it was a marvellous story, and if such confirmatory evidence could be brought from America it would be conclusive.

The LORD CHIEF JUSTICE: But none was brought.

Dr. KENEALY: None was brought. All I can say about LUIE'S statement is that it is a well-founded rule in law, "false in one, false in all." And all I ask you to do is to apply that to LUIE'S statement. The Defendant is always doing extraordinary things, and things which, as far as I can see, no man who is in the possession of a sound mind ever does or ever did. From an officer and gentleman he changed himself into a wild man, and from being the companion of gentlemen he became the associate of men of the lowest rank in the social scale. That these astounding changes do happen in real life I appeal to your own experience. How often have you seen a person who all his life long had been a pattern of modesty, suddenly breaking out into the wildest excesses? and, conversely, a man of debauched life will sometimes become a model of Christian perfection. There are men who can be persuaded of anything. Did you ever hear of a man of greater shrewdness or mental power than the late Mr. HENRY DRUMMOND? and yet he gave himself up to IRVINGISM, the diffusion of tongues, and Heaven knows what besides. If a man of such a high class of intellect should fall into such absurdities, is it wonderful that this Defendant, who has not a tenth or a hundredth part of the brain of Mr. DRUMMOND, should be persuaded by a person like LUIE to believe his story? But it has been proved that the 'Osprey' was no phantom ship. There really was an 'Osprey,' and who can tell that LUIE may not have really been like the Steward? Certainly it would be the extreme of harsh injustice to come to the conclusion that he wilfully produced that man as the Witness of truth when he knew him to be the Witness of falsehood.

Gentlemen, there is one observation which I should like you to bear in mind, that the whole of the bad features of this Prosecution will be carefully kept back from you after I have done my duty and sat down. You will be presented with nothing that is not fair and bright. You will be invited to the serene realms of justice; the Majesty of the Crown; the impartiality of the Government. The equity of our laws and our tribunals will be put before you. All the horrid and hideous characteristics of this Prosecution, on which I have dilated, will be left in the background. But keep them, I beg of you, ever before your eyes. Remember that truth needs no forgery, no deception, no double-dealing, no equivocation, no falsehood. Of all these this Prosecution is full; and if *you* forget them the Defendant is undone. The song of the Seiren will be raised to lull you to sleep; and if you listen, ruin will follow.

Gentlemen, in addition to this bright picture you will have probably pointed out to you, with systematic art and skill, a *catalogue raisonnee* of all that the Defendant has forgotten, while your memory will in nowise be refreshed as to the numerous things which he well remembers; things that could by no possibility be known to ARTHUR ORTON—not even by the most perfect "coaching" that can be devised. I have in some sort performed my duty in directing your minds to this; but in this vast Case it is utterly out of the question that I should be able to do so perfectly. My lord no doubt will present both sides, for he knows the Case a hundred times better than myself; and his judical duty

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* TICHBORNE LETTER ON JEAN LUIE.

31, Bessborough-street, S.W., December 12th, 1873.

DEAR SIR,—Although I saw you in Court last Monday or Tuesday, I could not for the life of me remember your name, and that fool of an Attorney of mine never told me you were in Court. My memory and eyesight have been so sorely tried during this Trial that I cannot depend on either. Had I known you had been up and identified that fellow, I would have at once instructed my Counsel not to defend the fellow any longer.

He must be the most clever scamp that ever walked on two legs. I am not, as a rule, easily imposed upon, but this fellow's plausible tale (because he mentioned the very things as happening that I stated myself) quite took me by surprise, or rather, off my guard.

When he first called, my servants told him to go to Poet's Corner, as I never saw any person in connection with the Trial here at my chambers, or I should get no rest. It appears he went there, and, unfortunately, met Mr. WHALLEY, who took down his statement, and then brought the fellow here in a cab, left him outside while he came in, and read his statement to me. I told Mr. WHALLEY before he brought the fellow in I could not bring to mind the features of the Steward of the 'Osprey.' WHALLEY then brought him in with a Mr. O'BRIEN, a pupil of Mr. MCMAHON'S, who he had left outside with him. When I saw him I really believed he was the man, and the fellow answered my questions so straightforward and earnest that it left no doubt on my mind but that he was telling the truth. But for all that I declined to let him be put into the box until his evidence was corroborated in some way. WHALLEY then volunteered to go to America and ascertain the truth of his statement, and after having several interviews with the fellow again, set out for New York. A few days after his arrival he telegraphed "All correct: Let him be examined, and then send him out here to me." This did not, however, appear sufficient for my Counsel and me, and so we decided to wait until we heard more; so we waited until WHALLEY returned. What he stated to Counsel I don't know; to me he never condescended to say anything; he seemed so cocky about it that he wanted me to hand over the conduct of the Case to him, and actually drew up a paper which he wanted me to sign to that effect, which I refused. As to Mr. WHALLEY'S conduct, I don't know what to say; he had the opportunity of testing the man, and deceived us all. MARKS has sold himself to the Treasury. I enclose a copy of his letter.—Yours truly,

MR. MUNDAY. R. C. D. TICHBORNE.

* See the *Introduction*, pp. 286, 310, for matter on this subject.

will impress on him when he puts the unfavourable parts before you to contrast them with those that are favourable. In you, therefore, and in the Bench, I confide fully on this particular, for my own shortcomings in this respect are painfully evident to my own mind.*

And yet it seems as if I could never lose faith in what your final verdict will be. This confidence in you nerves me up, and gives me strength night and day. There are moments when I feel myself in the position of the Roman Orator, who, when contending for his Client, TITUS QUINTIUS, felt that the great obstacle in his path was one powerful influence with which he had to contend. And yet he strove and conquered with the Jury. His appeal to their justice and their sense of duty, as well as of honour, prevailed. Pardon me if before we separate I recall your minds to that appeal. Consider me as making it to you in this Trial. Look upon me as putting it before you in no uncomplimentary spirit on behalf of this gentleman. How grand is the picture of the Orator, as we see him in imagination thus addressing that renowned Tribunal. But if you, he cried, who are the Judges shall appear to be no protection to a desolate and helpless condition against power and influence; if, before this tribunal, the cause is found to depend on interest, not on truth, then indeed there is no longer anything holy and uncontaminated in the State, no hope that the firmness and virtue of the Judges may counterbalance the law by condition of the accused. But undoubtedly before you and your colleagues Truth will prevail; or else, if it be driven from this place of power and influence, it will not be able to find any other place where it can stand.

[The Court then adjourned for luncheon.]

On its reassembling,

Dr. KENEALY said: I was speaking, Gentlemen, when we adjourned, of the wonderful gullibility, weakness, and folly that are found in the human mind even when most admirably constituted. I do not intend to remind you at this moment again of the story of Lord ABERDEEN, an English peer who became a common sailor, or of Viscount OCKHAM, the grandson of Lord BYRON, who became an ordinary workman at the docks down in the East of London. We have plenty of examples in this Case of the absurd things this Client of mine does, and the foolish and exaggerated views he takes of a great many matters. We know very well that for ten or fifteen minutes he used to keep the Carabineers in front of Miss HALES'S house; and yet, in his usual style, he transmogrifies it into two hours. In writing home from America he tells about impossible rides that he pretends to have done; at another time he speaks of pillars of silver; I wonder he did not also talk about altars of gold. I can well understand a man of this kind taking in every word told him by LUIE. If I believed—or even had the remotest suspicion—that he had put him forward knowing him to be the Witness of falsehood, no earthly influence would prevent me from at once casting him and his Case to the winds, and trampling on them with scorn. It is well known that this is what I did with a former Client of mine, Colonel BURKE, the moment I had any ground for believing he was mixed up in the Clerkenwell outrage.† I would not disgrace myself by being associated with such a Case; and so here, if I had any absolute knowledge, or even well-grounded suspicion that this man had made me his catspaw and tool by foisting this false Witness on me, before the face of all England I say I would disown and reject him. I take a charitable view of the matter, however. For a long time I have been considering the sort of mind this man must have, and I have come to the conclusion that it is anything but a clear and unclouded one. This is the man who talks about the 'Bella' having twelve feet of water in her hold. Why, the whole of his mind is credulity and exaggeration; and, therefore, I say everything that comes from him is to be received with charitable consideration. We have it as clear as possible that, in the very teeth of Lady TICHBORNE'S own written denial, this man said in Australia that his Mother was not telling the truth, and that he was right; that he was born here, nursed there, and so on. No earthly purpose, be it observed, was to be gained by this absurd conduct. On the contrary, the proper course for a man concocting a story with a view to personation would have been to jump in with everything. Really we cannot judge anything he does according to the rules of common sense. Only fancy that he is ROGER TICHBORNE, as a vast number of Witnesses, almost amounting to two hundred, have sworn he is. Fancy ROGER TICHBORNE giving the photograph of his wife and child, and saying it was a photograph of the wife and child of ARTHUR ORTON. What is to be done with a man of that kind? Why, not even a baby would say he is ARTHUR ORTON. Ask any man you meet on the street if he seriously believes him to be ARTHUR ORTON, and he will laugh at you. He is sworn to be ROGER TICHBORNE by upwards of two hundred persons, and those are persons of respectability, upon whom we must rely; yet that man so sworn to is actually donkey enough—(laughter)—to go down to Wapping, and say, "There is ARTHUR ORTON'S wife and child." After that I confess I am not surprised at a farmer friend of mine who calls his favourite donkey "Tichborne." (Laughter.) Again, this man goes into the box and swears he learned Greek and Hebrew at Stonyhurst. Mere Latin would not do for him; he must needs soar into the altitudes of Greek and Hebrew. What greater rubbish could he talk? Again his weakness and credulity were shown when Mrs. PITTENDREIGH'S letters were put into his hand. "Yes, they are in my writing," he said, without condescending even to look at them. Am I not warranted in believing that a person like this would credit every word told him by a skilful practitioner such as LUIE undoubtedly was? LUIE probably having studied the details of the Case, as I have already suggested, mentioned first one little incident and then another, till the Defendant without recalling his features thought, "How does he come to know all these things?" I could well believe a man even of sound mind being so imposed on. As to the Defendant, I could imagine him believing anything at all.

Mr. TAYLOR (Juryman): LUIE says he recognised him directly he went into the room.

Dr. KENEALY: Very likely so. I have only to ask you—as I did before—to apply to LUIE'S evidence the legal maxim, "False in one, false in all." That is all I can do about that matter. It has been remarked over and over again on the other side that nobody ever ran away in this way before, and the inference sought to be drawn is that the story is so unique that it must be false. The Defendant, however, is not the only man who has acted in this extraordinary manner; and if you and I were acquainted with all the incidents of life, we would probably find many parallels for every act of absurdity this gentleman has committed. There was the Case of ELLIOT'S Trust, which came before Vice-Chancellor MALINS at the commencement of this year, and which in one extraordinary respect was parallel with an act of this man's, which has been said to be utterly incredible. In the Case referred to, the petitioner left England, where his father and mother were both living, for Australia in 1858, and nothing was heard of him till 1871, when an advertisement was inserted in the 'Melbourne

* Neither Judge nor Jury seem to have fulfilled Dr. KENEALY'S hopes and wishes.

† We insert here a copy of Dr. KENEALY'S Speech on this occasion, taken from the *Englishman*, No. 4:—

SPEECH DELIVERED BY DR. KENEALY

AT BOW-STREET, WHEN WITHDRAWING FROM THE DEFENCE OF COLONEL BURKE, DECEMBER, 1867.

Before my learned friend begins, I have to make one or two remarks preliminary to my withdrawing from this Case as Counsel for the Prisoners.

I cannot any longer act for Mr. BURKE or his companion. When I was originally solicited by a deputation of their friends and relatives to give him my assistance as an advocate, I consented to do so as a matter of duty. I felt that no member of the Bar, no man of honour, is entitled to refuse his professional services to accused persons if they are resolved to have those services. If he do so, he prejudges them; and if he stands aloof, because he feels that he himself may become the object of misrepresentation, he sacrifices his independence in a way that I think no gentleman would like to emulate. Under these circumstances, I attended on behalf of these persons, and gave to their case attention and solicitude; nor would I have felt myself released until a Jury had pronounced a verdict of guilt or innocence. But the dreadful proceedings of yesterday have in my mind so altered this Case, that I cannot any longer act in it. When a Counsel is called on by the advisers and friends of Prisoners, it is supposed that thenceforward it is the law alone which must ultimately decide the issue; brute force is considered to be no longer thought of; any resort to it is supposed to be definitely abandoned. Upon this understanding, and upon this understanding alone, Counsel, who are merely ministers acting in the aid of justice, hold their retainer; and they cannot, even by their presence, appear to sanction proceedings of a lawless nature. And of what nature are the proceedings which yesterday startled the metropolis, and which to-day, flashed from east to west, will startle Europe. A crime of the most dreadful kind has been committed—not, indeed, by the Prisoners, but by their avowed friends and partisans. Upon the Prisoners themselves I make no imputation, and seek to cast no suspicion; but I cannot disguise from myself that their apparent friends, in reality their most deadly enemies, have perpetrated on their behalf an unexampled outrage. For aught I know, some of the very persons who retained my Solicitor, and through him engaged myself as Counsel, may be implicated in these proceedings. Under these circumstances, therefore, our compact is at an end; the understanding with which I went into the Case has been abandoned, but abandoned by them. They cannot in one moment invoke the imperial, the impartial Majesty of the Law, and in the next moment seek to annihilate that Law, and aim a deadly blow at the very primal element of civilized society. The Home Secretary, who has shown the greatest possible fairness to the Prisoners in this case, promised to give copies of certain documents, which might be useful to the Prisoners in their defence, and which he was in no way bound to give. The Prosecution, also, has been conducted hitherto with the most perfect moderation on the part of those who represent the Crown, and without anything in the least that savours of severity. I think that under these circumstances all connected with them were bound to abstain from any illegal course; and I desire, therefore, to say that I can no longer appear as Counsel for the Prisoners. *Sic libere, liberavi animam meam.*

Argus,' and, in reply to it, he wrote stating his identity, and requesting particulars as to his family.

A JURYMAN: Was he a baronet?

The LORD CHIEF JUSTICE: He was the son of an Indian Judge, or, at all events, of some Civil Servant. I happen to know the Case.

Dr. KENEALY: Well, it appears that both his brother and his sister were convinced of his identity from his letter; but one of the Trustees—being his own uncle—just like Uncle SEYMOUR in this Case—stepped in, and, notwithstanding the request of the petitioner's sister to wait until the petitioner came home, paid into Court under the Trustee Relief Act the five thousand and odd pounds in question, and at the same time stated that it was doubtful whether the person to whom it had been bequeathed was dead or alive.

The LORD CHIEF JUSTICE: Had the brother and sister seen him?

Dr. KENEALY: No. They had recognised his handwriting. The uncle would not accept their recognition, but paid the money into Court.

The LORD CHIEF JUSTICE: To await his coming. That is not a Case like this where the people had seen the Claimant.

Dr. KENEALY: But what I have told is not all. In November, 1872, he arrived in England, and was recognised by his brother and sister. His uncle did not deny his identity, but yet he did not take the money out of Court. The petitioner complained that its payment into Court was unnecessary and vexatious; and I am glad to say that Vice-Chancellor MALINS ordered the precious pair of Trustees to pay the costs of the proceedings. There is a wonderfully analogous Case. I merely quote it to show that other people do wild and foolish things beside the Defendant. I ask you to believe this man to have done nothing like a guilty action in bringing LUIE here. Of course, if he is ARTHUR ORTON he must have known LUIE to be an impostor. If you do not judge him with this foregone conclusion, however, but keep your minds impartial, you will form no hasty opinion about the matter. Another of the utterly wild and insane actions of this man was his writing to Mr. RICHARDSON, asking for information about the ORTON family, and especially about ARTHUR. Even if he is ARTHUR ORTON, he would not have written that letter.

A JURYMAN: By whom is the letter signed?

Dr. KENEALY: CASTRO.

Mr. Justice LUSH: Do you deny that he wrote it?

Dr. KENEALY: Not at all.

The LORD CHIEF JUSTICE: What object could ROGER TICHBORNE have in writing it?

Dr. KENEALY: None in the world.

The LORD CHIEF JUSTICE: I quite agree with you there.

Dr. KENEALY: But I also say I can see no earthly reason for ARTHUR ORTON writing it.

The LORD CHIEF JUSTICE: Do not assume that. It will require argument, because I must say it strikes me in quite the other way.

Mr. Justice LUSH: *Can you give any reason why* CASTRO *should write?*

A JUROR: How did CASTRO, if he was TICHBORNE, know about Mr. RICHARDSON?

Dr. KENEALY: The very terms of the letter go to show that it could not have been written by ORTON. Would he have written home to RICHARDSON to inquire about his own people? My mind is not subtle enough to comprehend these things. Had he intended to claim the Tichborne Estates he would not have run the risk of being overwhelmed with relations who would have sucked his blood. He would have avoided Wapping as a pestilence or a plague; he would not have gone there at all. So far from that, he would have kept his secret from every human being. If he were coming over here to personate ROGER TICHBORNE, so far from writing home he would have concealed his identity from all the world. He would have come home a new man, utterly disguised and transformed from his old appearance. The ORTON family would then have had no idea that he had any connection with them. He would have kept it as a profound secret, such as no human being would ever have been able to penetrate. And now I wish to ask you not to allow yourselves to be led away by any panic or heat of mind arising from the LUIE incident.

A JURYMAN: What is the date of that letter you referred to?

Dr. KENEALY: April 13, 1865.

A JURYMAN: That was the time ORTON and CASTRO were seen together.

Dr. KENEALY: Well, they could not be seen together if this is ARTHUR ORTON. I was saying, however, that we must not allow ourselves to be carried away by any panic or heat of mind arising out of the LUIE episode. Lord Chief Baron POLLOCK, in a case I have before me, has some remarks on the subject, and quotes two incidents related by Lord CLARENDON in proof of what he says. Both occurred during the great fire of London; and one was that of all the inhabitants of a street running down it in a panic, under the impression that the French were at the other end of it; while the other was that of a Portuguese being accused by a merchant of taking a fireball from his pocket and throwing it into a house, thereby causing it to go on fire, when all the poor Portuguese had done was to pick up a piece of bread he found, and, in accordance with the custom of his country, to place it on the window-sill of the first house he came to—this house being afterwards discovered to be several doors removed from that in which the fire had occurred. It may be said that things of this kind would only occur in great panics; but I submit that whatever strongly affects the mind—and I am sure your minds, in common with the minds of the whole community, cannot fail to have been strongly affected by the LUIE episode—is apt to cause prejudice. This man, remember, might be ROGER TICHBORNE, although he was guilty of producing LUIE knowing him to be a false Witness. I told you before of the case of an innocent man who was accused of murdering his niece, and who, having dressed up a stranger as that niece, was found out, and executed, and yet the real niece afterwards appeared. I say this man may have put forward LUIE knowingly, and still be ROGER TICHBORNE. But I do not believe he did so; and I have already told you that if I entertained a reasonable suspicion that he had, I would not stand here a moment longer for him. It is within the range of possibility, or even probability, that he might do so and yet be ROGER TICHBORNE; but when you consider the whole of this Case, I think you will agree with me that the fair and just conclusion to come to is that LUIE, by superior intellect, exercised a mastery over the Defendant, and, having carefully concocted his story, gulled him into the belief that he was what he pretended to be.

Mr. TAYLOR (Juryman): How can you reconcile that with Captain BROWN'S statement that he had known LUIE as the Mate of the 'Osprey' when it was at Rio, and, having seen him at Poet's-corner, had identified him?

Dr. KENEALY: Have I wasted my words in reading you that remarkable passage on mistaken identity?

The LORD CHIEF JUSTICE: If we could assume that there was an 'Osprey' at Rio in 1853, and that JEAN LUIE was the Steward, we could understand that it was possible for BROWN to be mistaken.

Dr. KENEALY: If the Jury are perfectly satisfied that there was an 'Osprey' at Rio in that year, there can be no mistake.

The LORD CHIEF JUSTICE: An 'Osprey,' that is, that had LUIE for its Steward.

A JURYMAN: He said he knew the Mate LUIE.

Dr. KENEALY: Remember that is twenty years ago.

The JURYMAN: And LUIE says he met BROWN.

Dr. KENEALY: LUIE, I say, is capable of anything.

The LORD CHIEF JUSTICE: One part of the Case that I would like to have cleared up is the statement of LUIE that he had been told that the Pilot who took the 'Osprey' into Melbourne and some of the crew were in England, and that when he expressed a desire to see them his request was refused. If the man was buoyed up with the belief that he was to be supported by the evidence of those Witnesses, it seriously reflects on the conduct of someone.

Dr. KENEALY: I don't know the passage to which you refer; but do I understand you to assume there were no such persons?

The LORD CHIEF JUSTICE: I assume there were no such persons, because they have not been produced, and I assume likewise the falsehood of LUIE'S story.

Dr. KENEALY: I will refer to the passage, but meanwhile the conclusion I draw from the fact that no person has appeared to support LUIE'S story, is, that it is conclusive evidence of the *bona fides* with which the Case has been conducted.

The LORD CHIEF JUSTICE: It is strong and conclusive evidence that there were no such persons.

Dr. KENEALY: If there were persons in that office capable of coaching LUIE, or urging him on to such a nefarious design, there would have been no lack of people in London to support him.

The LORD CHIEF JUSTICE: LUIE'S statement should be met with an emphatic denial or an explanation.

Dr. KENEALY: I will look into it and make inquiries; but, even assuming it to be as your lordship says, I say it is evidence in favour of innocence.

Mr. HAWKINS: LUIE said that he was not allowed to see any one of these men at the office. He said, "I wished to see at least one of the Witnesses—the Pilot." The question is then put—"Is he here?" to which he replied—"I understand so; I have been told so."

Mr. Justice LUSH: And he repeats the statement in re-examination.

The LORD CHIEF JUSTICE: He then says that the reason assigned for not letting him see him was that there should be no suspicion of confederacy.

Dr. KENEALY: The way in which all this strikes my mind is, that it is a strong and conclusive evidence of *bona fides*. They would not bring him into contact with anyone who might have misled him.

The LORD CHIEF JUSTICE: He had been told that they had got the Pilot who took the vessel into Melbourne, as well as some of the crew.

Dr. KENEALY: I don't care what he was told. I do not know the characters of all the persons who may go either for honest or dishonest purposes to Poet's Corner, or who may be either inadvertently or treacherously admitted there. I do not know a tithe of what is going on; and I certainly do not hold this Defence responsible for what unknown persons may tell to such a man as LUIE. If we had had the Pilot who took him into Melbourne, we certainly should have called him.

Mr. HAWKINS: BROWN said that he saw LUIE at Mr. HARCOURT'S Office.

Dr. KENEALY: I don't know what conclusion you can draw from that.

Mr. TAYLOR (Juryman): It is simply that BROWN says he saw

this man there. It seems to me to be as bad a case as that of Colonel BURKE.*

Dr. KENEALY: If we make up our mind that there is no honesty on one side we can see no honesty in anything they do. If you believe that those Witnesses I have called are all mad, then you will say he is not ROGER TICHBORNE. I can do without LUIE, and I shall ask you to give the mass of testimony I have called that weight to which it is entitled. I may have had the misfortune to call Witnesses whom you don't believe. Gentlemen, you should not reject true testimony because it is accompanied to a certain extent with untrue testimony. I wish to impress upon you that you should not form any hasty or prejudiced conclusion against the Defendant because he has had the misfortune to call LUIE. There is one observation I wish further to make on this matter of LUIE. I think we derive a lesson of great practical wisdom from it, and one which we might well apply to the Case we are now trying. The whole proceedings about LUIE demonstrate that if a fraud is attempted in England it must explode in a very short time. LUIE'S was a marvellous tale, and yet in three weeks the bubble burst, to the joy and delight of every well-thinking man. Now, if that was the result in a case like that, how comes it to pass that the fraud of the pretended ARTHUR ORTON was not exploded long and long ago? Do you think that any fraud could have lived so long? Do you think that any man attempting a fraud of this kind could survive for six or seven years? Do you think that the fraud could live so long? If there had been any fraud in this case, take my word for it, it could not have lived for six months. Its survival, surrounded by the unimpeachable testimony of so many Witnesses to the identity of the Defendant with ROGER TICHBORNE is perfectly impossible. If this man were ORTON, so far from living upon it for six months, I do not believe he could have lived upon it for six weeks. There is only one further observation which I think it will be necessary for me to make to you with reference to LUIE. The Prosecution alleges that they were greatly aggrieved because they received no notice of him. I don't know how they got notice that he had a contracted finger. Therefore, how they knew he had a contracted finger, and asked questions about it, is one of the mysteries of the LUIE episode.

A JUROR: He said in evidence that the Defendant complained when he was rubbing him, after washing him, on board the 'Bella,' that he hurt him with his crooked finger.

Dr. KENEALY: That is in re-examination arising out of that cross-examination.

Mr. HAWKINS: He said he told Mr. WHALLEY that he used to hurt him with the broken finger, and that if this was ROGER he would remember him by that.

[Mr. HAWKINS having read part of the evidence referred to,]

The LORD CHIEF JUSTICE: Then Dr. KENEALY is right.

Mr. HAWKINS: Not right in saying that we had previous information about it. The question was put in consequence of something which took place in Court.

[Mr. HAWKINS then read a considerable portion of the evidence relating to this point.]

Dr. KENEALY: It does not affect what I was saying, that with their array of Detectives the Prosecution knew something more of LUIE than they afterwards professed to know. I put to you whether you believe the Defendant is answerable for the misconduct of a wicked Witness who imposed on him just as Miss HALES'S memory imposed on the people who produced her. I don't want you to believe that knowingly and guiltily the Prosecution called a number of people to insinuate that there never was an 'Osprey' at Melbourne, though the allegation was rashly put forward. I called your attention to the numerous allusions of the Defendant to the 'Osprey' in conversation with Mr. HODSON, and also at the Law Institute, and I submit to you that the whole of the narrative as to the 'Osprey' is clear. When asked at the Law Institution he was uncertain as to the rig of the 'Osprey,' and a diversity of opinion prevailed among the Witnesses who were called upon this subject. I direct your attention to the evidence as to what passed on board the 'Bella' at the time of the shipwreck, in proof of the consistency of the story. I must remind you that LUIE said that he had no recollection of the peculiarity of the thumb of the Defendant, or of his wearing a particular ring. When a Witness is found not swearing up to the mark, as it is called, it throws persons off their guard. Then the Defendant goes on to say that he made no acquaintance on board the 'Osprey,' and could not tell the names of any of the persons. This man is asked about the passengers as if he was expected to recollect everything that occurred whilst he was in this fearful condition. It seems to me to have been cruel to put this series of questions, which it must have been known he could not answer. Then he is asked, "How long were you delirious?" and he replied, "Two months." There is the 'Osprey' story as told to Mr. HODSON on his way home, as reiterated to Mr. HOPKINS, as sought for at LLOYD'S, and subsequently sworn to at the Law Institution. How can any one, under such circumstances, entertain any reasonable doubt, bearing in mind what Lady TICHBORNE said about some of the crew having been taken to Melbourne, that that report was based upon a good foundation? We must endure any amount of reproach for having called LUIE, but I must ask you not to take an unfavourable view of the Defendant's conduct in the matter, considering the kind of mind and intellect he has. This is not the first instance of a man being unable to recover his estates. If we could animate with voice the stones of the Fleet Prison, many a tale would they tell of heirs of grand ancestral estates rotting away there from year to year without being able to bring before the tribunals of their country the knowledge of their rights. I think it was there that SMOLLETT learned the story of JAMES ANNESLEY. I think it was there that King THEODORE of Corsica died. It was there that Dr. MAGINN passed so many weary hours. What splendid scholars, what mighty men—including even FIELDING—paced those dreadful pavements! A history of Fleet Prison! what would it not convey? There is not an inch of that land that does not reek with human tears—nay, with human blood from the heart. If we open the pages of domestic history, we can find instances almost innumerable of persons being defrauded of their rights. And this seems to be a remarkable instance of one of that kind—an instance which will live as long as social history survives, but which I hope will live with a different moral to those to which I have just alluded—which will live to show that, notwithstanding unparalleled difficulties, your verdict will enable him to take a step further towards the recovery of his estates, which I sincerely hope to live to see him attain before many more years are past. The Witnesses I called were all subjected to a very severe cross-examination, and I think you will say that on the whole they were as powerful a body of Witnesses as were ever presented to any Court. Certainly the way in which those Witnesses were called to negative the ORTON theory, and those who were examined to support the TICHBORNE theory conducted themselves, was such as to entitle them to the most complete belief on your part. I will ask you to contrast the nervous and excited state in which Mrs. LUIE gave her evidence with that of Miss LODER, who showed no more emotion than if she had been one of Madame TUSSAUD'S wax models. (Laughter.) There was no quivering of the lip and no recognition of the eye when she was face to face with her pretended lover. In the one case you had a woman with a real wrong; in the other, a woman with a pretended wrong.

The LORD CHIEF JUSTICE: Did Miss LODER say that she had experienced any wrong? I did not understand that she came here to complain of any wrong. She had been keeping company with somebody else since. (Laughter.)

Dr. KENEALY: So had Mrs. LUIE.

Mr. Justice LUSH: One was a wife deserted by a bad husband. The other was a young woman who had given up the thought for twenty years.

Dr. KENEALY: It is said that first love always survives.

Mr. Justice LUSH: But she had been keeping company with somebody else since. (Laughter).

A JURYMAN: Perhaps Dr. KENEALY does not believe in first love. (Laughter.)

Dr. KENEALY: I do not believe in MARY ANN LODER; I do not believe in her "love." I make no imputation on her character. I do not affect to know anything about her. She knows a great deal, as she says; *we* know nothing whatever about the lady. She may be "as chaste as ice"—and I hope she is; but that is no reason why I should implicitly walk in her pathway.

Mr. TAYLOR (Juryman): We do not want to hear anything against Miss LODER.

Dr. KENEALY: As you please! I leave her to you with all my heart. I pass from her with pleasure to another topic, with which it seems meet to conclude. The Family, as it seems to me in this Case, have mistaken the age in which they live. In bygone days, Juries were often pliant tools of those who were in power; and we read with scorn and sentiments of shame the records of their baseness and subserviency. But the spirit of our own times is different.* There is a manly spirit abroad; there is a power called Public Opinion, which was not always

* This was a hint to Dr. KENEALY to act in the same way now as he had then. Dr. KENEALY had received more than one hint of the same kind through Master F. COCKBURN, during the Trial. Had he conveyed the same idea to the Juror?

* LORD RIVERS TO DR. KENEALY.

Tuesday Night, 16 Decr.

MY DEAR KENEALY,—Before going to bed I must write you a few lines expressive of my opinion of Monday's proceedings in which I think you shone more than on any other day since the commencement of your Speech. Stick to it like that, and a non-conviction is a certainty. In your explanation of the LUIE business, you have as much as is possible to do to neutralise the bad effect he occasioned; and in fixing the attention of the Jury on certain parts of the evidence in your favour, I think you are putting it out of their power to convict. Do not too determinedly make up your mind that the verdict is a foregone conclusion. This great and unprecedented Trial *must* be decided according to the evidence, and if you continue to point out to the Jury certain facts which cannot be denied, I don't believe they can, or that they dare, ignore them. The Chief also *must* sum up according to the evidence, and if that is not strong enough to prove him TICHBORNE, it is strong enough to prevent their proof of his being anybody else, and unless they prove him somebody, I believe a conviction to be impossible. My own belief of LUIE is, that if not a plant it is mistaken identity, and I am more inclined to believe in the latter. Follow on with a succession of Mondays, and the Case is far from lost.—Yours sincerely,

RIVERS.

found—nay, which perhaps did not exist in the days when Judges wore the robe of Justice only to smear it with blood, and cover it with the worst pollution. But now I speak in the constructive presence of the whole English People. They are the safeguards, if any were required, of this Defendant's rights and liberties. The law may be tortured, evidence may be got up or perverted, but the instincts of a People indoctrinated and inured to freedom can never be wrong. At this moment how many thousand hearts are throbbing for the fate of this gentleman; how many anxious eyes are turned day by day to the record of our proceedings; and with what anxious, loving hope, your verdict is awaited. How many tears of relief and joy will be shed when the glorious language of acquittal is pronounced. And you—how proud will be your own feelings, as you recognise in the sympathies and in the admiration of millions that you have upheld the honour of your country; that you have exhibited and maintained the manly and independent spirit which we associate with the name of Englishman; that you have been animated all through by a noble impartiality which was in no way swayed by denunciations in the highways and the byeways, in Halls and Guilds, and drawing-rooms, where the words "Impostor" and "imposture" rang until the atmosphere itself seemed tainted by prejudice; and that you have added one more jewel to the already radiant diadem which crowns the form of Trial by Jury.

[The Court adjourned at 4 o'clock.]

ONE HUNDRED AND FORTY-SECOND DAY.—TUESDAY, DECEMBER 16TH, 1873.

The Court was again densely crowded, but there were comparatively few persons in Westminster Hall waiting for admission. On the commencement of the proceedings only two Judges appeared on the bench.

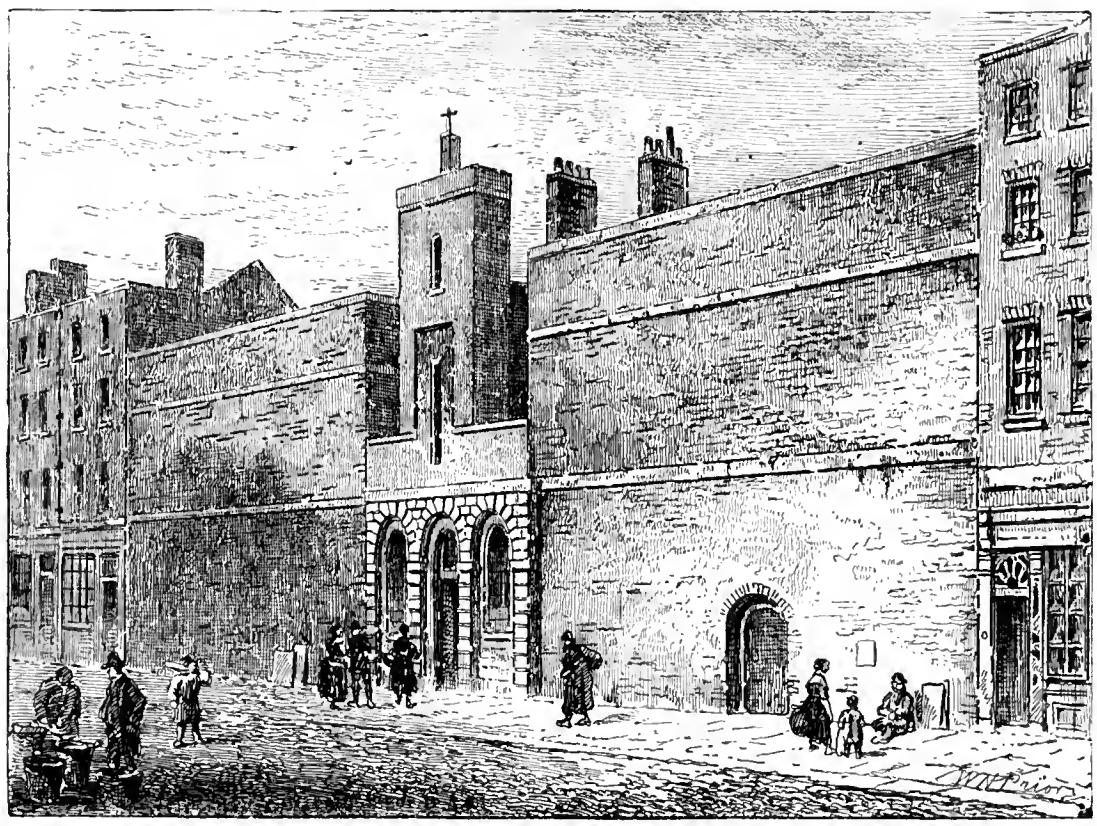
Mr. Justice MELLOR: Gentlemen, the Lord Chief Justice will be here presently, and in the meantime Dr. KENEALY will continue his address to the Jury.

Dr. KENEALY resumed his address to the Jury on behalf of the Defendant. He said: May it please your lordship, Gentlemen of the Jury—The theory of imposture which the Prosecution presents before you would require the most extraordinary amount of credence that ever existed in the human mind to accept. Take the case exactly as it is, or as they would have you believe it to be. A young English baronet of remarkable peculiarities, both of mind and body, suddenly disappears. He is supposed to be lost in a ship, and buried in the depth of the sea. All traces, all records of him are lost for a considerable number of years. He has passed away from human memory as completely as if he had never existed. Suddenly an advertisement appears in a newspaper describing some of the peculiarities of ROGER TICHBORNE—thin, slight, delicate, sallow, fair hair, and so on. This advertisement, according to the theory of the Prosecution, falls into the hands of a man essentially different from all these things—a man of the most ignorant mind, of the lowest associations and the most debased pursuits, who by no chance or possibility could ever have come into contact with ROGER TICHBORNE, or even have heard of him except through that advertisement. TICHBORNE was thin, sallow, and pale. The man who suddenly determines to assume his character is stout, florid, and powerful—a giant as compared with the poor dying creature that is advertised for. Again, ROGER TICHBORNE was a man connected with some of the aristocracy of England, and is supposed to possess their high breeding, refinement, and knowledge of society, some of the arts and accomplishments that are associated with patrician blood. The man who assumes his character is in all respects the very reverse of all this. The thought occurs to him—"I will claim to be the long-lost son." Did ever such a theory enter into human brain? Was there ever so daring a flight of imagination? In ordinary cases of personation, a relation, an acquaintance, a friend assumes the character of a person with whose private life and habits he is acquainted. Sometimes gentlemen who have died abroad have been personated by some favourite servant who knew all their antecedents; or some person who knew something of the gentleman simulated; and who, if questioned as to personal peculiarities, habits and friends, would have some knowledge of those particulars. But there never has been a case of personation where the original man was not known to the man who attempted to personate him. Here the supposed impostor had no means of knowledge beyond a *Home News* of 1862, a Peerage, a Baronetage, and an *Illustrated London News;* and on the faith of these three things—none of which he has been proved to have had—this associate of bushrangers instantly determines to assume the character of ROGER TICHBORNE. Did anybody ever in fiction read or hear of anything so absurd? But its absurdity does not end there. He takes a voyage to Sydney, and meets an old and faithful servant of the family, upon whose character no stain rests—a pensioner of the house, and bound to it by every tie of duty and respect. He persuades that person to be an accomplice in his fraud, or that he was ROGER TICHBORNE, not being so. Each contingency is impossible. He could not shake the fidelity of a man of that kind by any art or cunning, or persuade him to abdicate from the purity of his whole former life; and if he were an impostor, he could not persuade BOGLE that he was ROGER TICHBORNE. But the impossibility does not end there. The impostor comes to England. The first person by whom he is recognised—this low and vulgar blackguard out of the woods, the horrid beast with no associates but those that were vile and debasing—the first person to recognise and welcome him is a lady of high refinement, great caution, and keen discrimination of character. The first moment she sees him, the maternal instinct arises in her breast, and she acknowledges him as her long-lost son. Is it credible? Is there any man that would not shrink from presenting such a notion before the public? She not only recognised him, but remained constant in that recognition to the last. It is not as if no attempt had been made to awaken suspicion. For months those persons to whom she had a right to look with affection and respect unceasingly warned her; her two brothers, her attorney, Mr. BOWKER did so, but she was still convinced that he was her son. Nothing could shake her faith. She had but to look upon him to be convinced. Gentlemen, what a wonderful thing maternal instinct is. I was talking the other day to a poor Irish woman, and she said to me with that mingled pathos and poetry which are characteristic of the nation, "As if, sir, I would not know my own son after twenty years by the mere touch of his hand." It struck me that there was deep feeling and wisdom in that remark. But, Gentlemen, the impossibilities do not end here. The man having come to England, is recognised by his mother. He is a man who has been in the army. He presents himself to his brother officers and the men of the regiment, and they say, "This is ROGER TICHBORNE." Keen-eyed, clear-headed men recognise him as their officer or brother officer—persons on whom no imputation of deceit or falsehood can rest. They see him, they converse of old times, and leave his presence convinced that he is the man. The thin lath of a boy has grown into a muscular man; his voice, once weak as a baby's, has by exercise in the wilderness become powerful; but there are features which remain unchanged by which he is remembered and recognised. Persons of fashion and education find themselves in the company, not of a hideous vulgar backwoodsman, but of a perfect gentleman. Further than that, he goes to his native county and takes a house there. He is seen by the old farmers and tenants and ancient hangers-on of the Family and Estate, and they are one and all convinced that he is the man. They see the arched eyebrows, the twitch, the sloping shoulders, the peculiar in-kneed gait, and the extraordinary fact that, notwithstanding his enormous bulk, he now narrows down on the hips as he did when first in the regiment when he could not keep up his belt; and they know he is ROGER. These are things which are perfectly established. They could not be the result of accident. It has happened before now that an impostor has been to a certain extent successful, but immediately inquiry is set on foot the fraud is discovered. There never was known an instance of anyone having been able to sustain an imposture for any length of time. Gentlemen, the lines of demarcation between the higher and lower grades of society in England are very definite. I can understand a man assuming the character of a person of his own rank in life, and we can understand a person in the rank of ARTHUR ORTON soaring a little higher, and professing to be what is called a gentleman; but I cannot imagine his soaring so high as to pretend to be able to represent a baronet of one of the most ancient families in England. The very thought of aspiring to a position so far removed from that in which he had been moving all his life would be sufficient to frighten away what wits he once possessed. A butcher's boy with Shetland ponies, running about from ship to ship with pieces of meat—why the difference is so great that it would require a man with the most extraordinary presumption to enter upon such a course, and it would require a man of the highest talent successfully to accomplish it even for a moment. Gentlemen, that such a thing could have happened is the contrary of all history and of all experience. But I go further still. See the numerous absurdities into which we must fall if we once admit this theory into our minds. This man, having concocted this extraordinary fraud, in consequence of a grossness and dulness of intellect, and the want of memory, and a remarkable forgetfulness upon some things, side by side with an extraordinary tenacity of memory upon other things—this man falls into a series of innumerable blunders. He makes mistakes of the most outrageous kind, and does things which to any ordinary impostor would be utter ruin, and would go very far to shake the confidence of all those connected with him. He writes a letter which he denies, but which he subsequently admits. He does not heed public opinion. He goes on in his own course, indulging himself, and careless what other people say or think about him. Yet those who have seen him, and say that he is ROGER TICHBORNE notwithstanding all these mad acts of his, come forward again and again, and say that he is the man—that he is ROGER TICHBORNE and nobody else, and that their faith in his identity is unshaken. Could that possibly occur in human existence if this were not the man he represents himself to be? Gentlemen, if we were to consider the case of persons who

formerly played remarkable parts in this world as impostors, and were to select one or two instances, we should find that they succeeded for a short time only, and that under circumstances absolutely different from this supposed ARTHUR ORTON. There is the case of SMERDIS, a Magus, who belonged to a powerful body, and was himself one of the most accomplished men in the world. And yet it was only for a very short period that he was able to maintain the character he had assumed. Belonging to a powerful political body, and assuming as he did for a time absolutely Royal power, yet so mighty is truth that he was quickly detected and exposed. That Case remains on record, and is probably one of the most remarkable that the world has ever known. There is another Case—that of PERKIN WARBECK, who assumed to be the son of King EDWARD IV.; being really his godson. He knew all about his presumed father perfectly well. He had been brought up in the highest ranks of society. He had been often in personal communication with the king, and resembled him in the beauty of his person. He was a man of great wit, great sense, and great knowledge, and he had been taken in hand by the Duchess of BURGUNDY, who taught him everything necessary for sustaining the position to which he aspired; and yet with all these advantages in his favour his imposture was detected and exposed in a very short time. I don't believe that the annals of the world show that any great imposture succeeded except for a very short interval. If this be the imposture the Crown would have you believe, it is the most long-lived that ever was known. Gentlemen, I invite you, therefore, upon a full consideration of all these circumstances, to say that you are irresistibly driven to the conclusion that it is impossible that the Defendant who sits below me can be an impostor. Gentlemen, I called your attention the other day to a letter which the Defendant had written to ROUSE, in which he mentions that false testimony had been offered to him by supposed sailors from the wreck of the 'Bella.' There is a passage in a letter from the Defendant to Lady TICHBORNE, dated Sept. 12th, 1867, printed in M. CHABOT'S evidence, which was given on the 8th of July (page 95), and it is a passage of great significance when we read it in connection with recent occurrences:

"My dear Mama—I wish you would tell me in your next letter whether a Frenchman named FINKENSTEIN called on you before you left London, and what he said to you about me, for I think the man is no good. He told me he had called on you. I wish he had not called on me, for I think he is a vagabond. He has made a long statement very much in my favour to me, but I believe it is all false."

This is the man who is charged with concocting falsehood. He goes on:



THE FLEET PRISON.

"I have wrote to HOLMES and told him so. FINKENSTEIN called again this morning." *

This letter, gentlemen, I would remind you, is not produced by us; it came from the Crown. It comes from amongst the letters of the Defendant, of which we have been deprived.

Mr. HAWKINS: The letters, my lord, were lodged in the Court of Chancery.

Mr. Justice LUSH: And by order of that Court.

Dr. KENEALY: Yes, my lord, but by obtaining his letters they have drawn his teeth.

Mr. HAWKINS: How can we be said to have drawn his teeth The Defendant had access to every one of them. They were deposited by himself.

Mr. Justice MELLOR: The Court so directed.

Dr. KENEALY: On the application of his opponents.

Mr. Justice LUSH: But in his own suit

Dr. KENEALY: Yes, my lord, but not voluntarily. No one but a lunatic would have voluntarily given his adversaries all his own

* The following Letter from the Defendant to Lady TICHBORNE was read at the first Trial, and appears in the cross-examination. It is of importance when read in connexion with the above, and it negatives the idea of his acceding to false evidence.

"Sept. 5th /67.

"I hope my Mamma you will write me a long letter for you see I am keeping my promise and writing you a long letter every day. It very wet here and of course it makes it very unpleasant. But we must not grumble at GOD'S will. My dear Mamma, I see they still are a-goine to try the 'Bella' plan. Mr. HOLMES got a letter from one spy yesterday, he had seen the Men who says they were saved from the 'Bella.' He asked them how it was they got wrecked at Cape Hatteras when the boat was picked up near Rio he said that was easy explained that a heavy sea struck the ship two days after they left Rio and swept the boat away. He forgot my dear Mamma that a part of the ship was picked up as well as the boat. All I can say my dear Mamma is that I hope GOD in his great mercy will forgive those wicked people that as persuaded those poor sailors to perjure themselves for a few pounds. I mention this my dear Mamma For I know that that person is above the ordinary class of life, and one who ought to know better. My dear Mamma since writing the above a gentleman has called on me who I knew in Melbourne. This gentleman says that I was pointed out to him in Melbourne as a Son of Sir JAMES TICHBORNE By Mr. HODGES who was M.P. for Kent and who I knew before I left England when I was stationed in Canterbury. He says that Mr. HODGES pointed me out to him and several other gentlemen who he named, and who I remember well."

This was a plant on the Defendant. Had it any connection with the FINKENSTEIN plant which he condemned in his letter. Strange it is that FINKE and MEINKE should be names given to Mr. WHALLEY in New York. See his Report, printed in the *Introduction*. FINKE is not far from FINKENSTEIN. LUIE was a Convict in 1867. Was the "plant" then designed, also the work of Detectives?

letters. It was done, no doubt, under an order of the Court, but from those letters they found out all about his private life, and doing that I call drawing his teeth. He goes on:

"I would not see him without HOLMES was present. I think he is an adventurer, and no good. I have to be very careful, for if I have one false Witness it would ruin my Case, and my friends would never forgive me."

Gentlemen, I point your attention to that as an indisputable proof that he never has resorted to any falsehood in this Case. Whether FINKENSTEIN went on his own account, or was put on him by Detectives, it is impossible to say. These are two facts which disprove the theory of the Prosecution—that he is putting forward a tissue of falsehoods; and I say that truth and honour have characterised his conduct throughout this Case. Glad would his opponents have been if they could have found the Defendant had employed any Detectives or such persons, who generally make out such a Case as their employers wish. Glad would they have been if they could have done that: but every inquiry has been made, as you must have surmised by the cross-examination of my Witnesses, for they knew the very amount of rent paid for the lodgings of some of them, although they pretended that our Witnesses came upon them by surprise. Not one instance has been known on the part of this gentleman of ever reverting to such means for the purpose of supporting his Case. Lord ARUNDELL of Wardour has not been above walking about Wapping with his Detectives. Not so the Defendant. Letters have been written by the other side denouncing the Defendant as an impostor; but he has not adopted similar means in return. The only angry letter the Defendant wrote was to General JONES, who had denounced this man before the Trial came on as an impostor, and the Defendant wrote a dignified letter calling his attention to the impropriety of such a course; but it has never been known that he wrote letters for the purpose of intimidation against the opposite Witnesses. These things go to show his reliance upon the overwhelming sense of justice that presides in the jury-box, in the faith that Truth will in the end conquer. There is no act of his which will not bear examination. A man who had been concocting a fraud, so far from quarrelling with those in his confidence, would have been likely to pursue a policy of conciliation; but the Defendant goes to attorney after attorney; and if they do not suit his capricious taste he casts them off like an old glove. Everything he does is consistent with truth, self-conscious honesty of purpose, and a conviction of identity which he hopes to bring home to others. I also invite attention to the number of family facts known to this man which could not have been known to him unless he were ROGER TICHBORNE. Placed in circumstances of the most disheartening character, a wretched homeless wanderer, living in the open air and sleeping in the forests, often without a hut over his head, most of his existence passed in the saddle—no one could tell him in that wilderness anything of the existence of ROGER TICHBORNE. To him it was doubtless a joyous and unfettered existence, and after the toil and worry of the last seven years we may not doubt that he would be glad to return to it again. Probably his existence was one of the most romantic that ever was passed. If he were capable of sitting down and giving us his reminiscences of the scenes through which he has wandered, no book of fiction that ever was published would contain so remarkable a story. Every tittle of knowledge he possessed must have been utterly lost in that life he was leading, for anything like a book of literature was unknown there. We have a remarkable cipher in one of the books produced, which is the only record of the scenes in which he was engaged. Did he communicate with his companions in cipher? That would lead us into a number of strange speculations. It does seem a singular thing that that cipher in that pocket-book should contain the name and title of ROGER TICHBORNE, as if it were put there by him in case he might perish in that country, so that the pocket-book might prove a clue to the history of that fallen man. One of the most extraordinary mistakes made by Mr. GIBBES in his evidence was that he translated that cipher as representing the name MARY ANN LODER. That is perfectly absurd, and it is not the only mistake into which Mr. GIBBES has fallen in this Case.

Mr. Justice MELLOR: I understood Mr. GIBBES to say that "MARY ANN LODER" was in the book as well as the cipher, not that "MARY ANN LODER" was written in cipher.*

A JUROR: Is there any doubt about what that cipher is?

Dr. KENEALY: No.

Mr. Justice LUSH: One of the Witnesses stated that there was the name of Miss LODER in secret writing.

Dr. KENEALY: Yes.

Mr. Justice LUSH: There seems to me to be an ambiguity about it, for further on he says, "There was MARY ANN LODER, the cipher, and Surrey."

Mr. Justice MELLOR: I never understood until now that he meant that MARY ANN LODER'S name was in cipher.

Dr. KENEALY: Oh yes, my lord. He says "MARY ANNE LODER in the cipher." But it is not of much importance. I merely mention this to show into what mistakes a man may fall. GIBBES might fancy that he could read Miss LODER in that cipher, but it is clear that he must have been mistaken. It was a South American cipher used by the father of the Lord Chief Justice, and I contend that it was written by the Defendant as a clue to his identity in case of his accidental death. Gentlemen, I have mentioned to you a man of the name of FINKENSTEIN as having put himself upon the Defendant or having been put upon him as what is called a "plant," by those whose interests were adverse to the Defendant; and I now call your attention to the name of another individual of whom we have heard a great deal in this Case. I know not whether he was put upon him as FINKENSTEIN may have been, but certainly the conduct of Mr. ROUSE in respect to this Defendant is such that if he was not put upon him, he has behaved after the manner that such a man would have behaved. The Defendant, in his examination in the Court of Common Pleas, said:—

"When I went away to Rio I left ROUSE, and gave him authority to open any letters which came to me. He was a person who pretended to be a great friend of mine."

It would seem from that that the Defendant thought it probable that he might have been a "plant." The Defendant continues:—

"I gave him authority to open all my letters. He did so, and supplied you with the contents of them."

But there is another passage which further exemplifies to us the extraordinary proceeding of this man ROUSE, and which seems to me to be very pregnant with suspicion. It is this:—

"I first heard it alleged that I was ARTHUR ORTON from ROUSE. Detective WHICHER had been down. I think it was the latter end of 1867. I had very confidential communications with ROUSE—in fact I was more intimate with him than anybody else. My poor mother took a great liking to him, and he used to come to my house. In fact I made as great a confident of him as I could of any man. I am afraid no man could place stronger confidence in another. I kept nothing from him."

Gentlemen, the use I make of ROUSE and his extraordinary conduct is twofold. ROUSE has furnished the Prosecution, as you are aware, with almost a volume of private letters written to him by the Defendant. He is one of the persons in whom the Defendant placed the greatest possible confidence. Now we know that at the present time and for some years ROUSE has "gone over to the other side," as it is called. If any man in the world can be cognisant of any guilty knowledge on the part of the Defendant in this Case ROUSE is that man. Therefore, if there was anything black—anything which would not bear the light—if anything was passing which savoured of fraud or conspiracy, ROUSE, who had the opening of all the letters of the Defendant, and who was thoroughly in his confidence, must have known it. The reverse appears to me obvious from that fact. First of all, do you think he would have dared to confide in ROUSE if there were any fraud? Secondly, if there had been any treachery or invitations to give false evidence, should we not have had ROUSE in the box to unveil the conspiracy? That is an unanswerable proposition. It is a dilemma from which there is no escaping. Mr. HAWKINS talked continually of conspiracy and fraud, but he has failed to give a tittle of evidence to show any foundation for those charges. If there be any time in the Defendant's existence when he would be getting up a conspiracy it must have been in 1867, when he was intimate with ROUSE. Whether ROUSE from the first was a false friend, I know not; but it is as clear as the light that if they could give you an atom of information of anything wrong, ROUSE would have been produced. He is not produced, and therefore no such wrong exists. Mr. HAWKINS in effect says that ROUSE was the Defendant's friend; but finding that he was a rogue and an impostor, he gave the Defendant all his letters. A fine theory! I say, prove it. You had the power to put ROUSE in the box to show the reason why he abandoned the Defendant. It is a great grievance, Gentlemen, that without a tittle of evidence, fraud and conspiracy should be insinuated in this way. I called upon them continually to produce him, though not so pertinaciously as Mr. HAWKINS called for Mr. ONSLOW, Mr. WHALLEY, and other gentlemen. I should have been glad to have had him to cross-examine, but I would not have skinned him alive, as Mr. HAWKINS was to have done Mr. WHALLEY. This Prosecution is not so remarkably strong that it can do without ROUSE or anyone else who can throw light on it. But their not calling him is an invincible argument to show that the Defendant's most trusty friend after he first came to this country knows nothing adverse to the Defendant. No evidence in England could be more important to them if this man were an impostor. He could either have satisfied your minds or have disabused your minds as to the underhand means used. But the opportunity has not been afforded you of seeing Mr. ROUSE. I should have asked him unhesitatingly, had he been produced, why he left the Cause of the Defendant. If he left for good reasons, let us have them developed to the world. If he left it because he was a plant put upon the man, or if he was subsequently bought over, let us have the fact elicited. I have looked at the whole of this matter of Mr. ROUSE as carefully as I could, and I am unable to see any innocent solution of his conduct. If any of you Gentlemen had been placed in a similar position, would you not have said, as Mr. ROUSE ought to have said, "My reputation is dear to me, and I will defend it. I demand to be put into the box as a matter of justice to myself and to your own Cause." That is what was not done. Why it was not I must leave you to speculate. But he is not the only individual I have challenged. I shall have to comment on other gentlemen by-

* This cipher appears in Vol. IV., page 281.

and-bye whose names have been mentioned, but who have not been put into the box. Mr. HAWKINS in his Speech stated that if I did not call Mr. HOLMES he would comment upon the fact, and I am therefore bound to tell you why I did not put him in the box. Gentlemen, I think the conduct of Mr. HOLMES in this Case fully justifies me in not having called him. He attended here every day under a subpœna from the other side with his papers, and he was bound to do so, but he was under no moral or legal obligation to give the Crown lists of the Defendant's documents which were in his possession. His rights and privileges were clear. He was bound to come, and he was equally bound to produce any document that was called for, but he was not bound to give a list of the documents. On the contrary, the privilege of his profession ought to have prevented his doing so. I say that that was an act of treachery on the part of Mr. HOLMES which alone was sufficient to prevent me calling him. Again, Mr. HOLMES, if he had adopted the proper means, ought to have set down the Case in the Common Pleas when the Defendant had his Witnesses ready. If he had done so Lady TICHBORNE would have been in the Witness-box, and the Case would have been won. He did not do so, and that is another reason why I did not call him. Then as to Mr. LEET, he was the person who accidentally met the Defendant at some place where they were having beer, and although a stranger, became all of a sudden wonderfully interested in him, and introduced him to Mr. HOLMES. Having declined to call Mr. HOLMES, I also declined to call Mr. LEET. Mr. HAWKINS will ask you, perhaps, why I did not call HOLMES to contradict GOSFORD. I ask you why did not Mr. HAWKINS call HOLMES to corroborate GOSFORD. But, Gentlemen, do not lose sight of this fact: If Mr. HOLMES had been cognisant of any guilty act committed or contemplated by the Defendant, would he not have been called? for remember that the obligation to secrecy which exists on the part of an attorney towards his client is removed the moment the client does anything which is underhand or fraudulent. In law, and in morals, the attorney is bound to break the link which unites them. The attorney who discovers baseness or fraud on the part of his client can fairly say, "The connection which has existed between us is at end; and if I am called upon to reveal in Court these practices of yours which have disgusted me with you, and which now break the professional relationship which I have had with you, I will come forward honourably and reveal those practices to the world." You see how fine and wise the law is, Gentlemen? It preserves the tie between attorney and client so long as the conduct of the parties is honourable, but it breaks it the moment the state of things is reversed; therefore, if HOLMES could have pointed to one single atom of the conduct of the Defendant in this Case that would not bear examination, that savoured in the least degree of fraud or conspiracy, what a powerful Witness would he not have been in corroboration of Mr. GOSFORD, or in favour of the view that this case is a conspiracy! There was no necessity, then, for them to throw the obligation on me to call Mr. HOLMES. If I could allow that Mr. HAWKINS could not call him, then there would be great weight in the arguments of the Prosecution on this point; but as it is as clear law as anything can be that Mr. HAWKINS was entitled under the circumstances—that is, if it was believed that fraud existed—to call him, therefore I say he ought to have called him. But I will tell why I think he did not do so. Mr. HOLMES is now avowedly in league with the Prosecution—there is no concealment about it. He did not affect to come here feeling any interest in his former Client. He sat amongst the Defendant's adversaries, and is at their beck and call. There was not a single document which he had which he did not put in the list with which he favoured them. I have here a long list comprising I don't know how many documents which Mr. HOLMES told them he had and which they gave me notice they were going to produce. Well, then, if these are the relations which exist between Mr. HOLMES and the Prosecution, and if he were cognisant of a single dishonest act or word on the part of the Defendant, he would have revealed it to them—nay, was bound to reveal it, and, if it existed, did reveal it. His not being put into the box, then, I contend, is proof worth that of a thousand Witnesses that nothing dishonest was communicated to him by the Defendant. It is pretended that Mr. HOLMES was sent here and there by the Defendant on errands of wickedness to get up this piece of information and that piece of information, and to see and pump Witnesses; but all this is mere suggestion. There is not a word of proof. How easy, if there is an atom of truth in the suggestion that the Defendant had sent Mr. HOLMES about in this manner for information, and if he had said after the Witnesses had been pumped, "Come, HOLMES, what did So-and-so tell you the other day? I have to see him in a day or two, and I must be able to say something to him," and Mr. HOLMES had given him the required information—how very easy, I say, it would be to tell you all this, and, if Mr. HOLMES had done so, so far from his being open to reprobation, he would be met with the respect of every honest man in England for having withdrawn the veil from such a gigantic fraud and exposed this man in his true character. This was not done, however, and therefore here are two men who know more than any other men in the world of the Defendant, and who, if he had ever been guilty of a single word or suggestion of fraud during the years they were connected with him, would have told us, and yet neither of them is put into the box. What is the inference to be drawn from this? Why, there can only be one inference; namely that this man, this careless, heedless, reckless man, never was, to their knowledge, guilty of one single act or word which will not bear revelation in this Court. There really is no escaping—so far as I can see—from the force of that argument. I invite Mr. HAWKINS to meet it. He has been good enough to invite me to meet him on the subject of HOLMES, and I return his invitation boldly, begging him to meet my argument on the subject of ROUSE and HOLMES. I am unable to find, although I have searched for it, what satisfactory answer can be given by Mr. HAWKINS to the question why, having two men who knew more than all the rest of the people in England put together of this man, and who, therefore, must have known every fraudulent and dishonest thing he had done—if he had ever been guilty of fraud or dishonesty—why, having these two men in the country, they did not call them before you. No feelings of delicacy could have operated on their minds to prevent their unmasking this gigantic villainy, as it is called. So far from entertaining a feeling of delicacy, each one would experience a thrill of joy and exultation—if his heart were in the right place—in being able to say, "I, too, was one who assisted in exposing this infamous impostor; I, too, was one who prevented my countrymen and a Jury of my countrymen from being misled by an abominable fraud." Amongst the list of documents that have been given to us are particulars of the ship 'Bella,' the list of the crews of the 'Themis,' the 'Osprey' of Glasgow, the 'Ocean,' the 'Jessie Miller,' and of the 'Middleton.' Gentlemen, did Mr. HOLMES procure those documents corruptly or incorruptly? Did he procure them with the design of coaching-up the Defendant, or in his ministerial capacity as attorney? From this dilemma there is no escape. Mr. HOLMES could have enlightened us on this point at once. He might have said, "Certainly, I had no corrupt intention when I got these documents. I thought they were essential for a complete and perfect knowledge of the Case. I got them, and I kept them." All that would have been incorrupt, and no one could complain; but he might have said, if the fact were so, "I got these documents and lent them to the Defendant, and the Defendant mastered their contents." That might savour of corruption or great indiscretion. I am perfectly willing to call it indiscretion, and avoid any other phrase; but, Gentlemen, would it not have been of immense importance for you to have heard from his examination whether he ever did lend these documents to the Defendant or not? The Defendant might have borrowed them and read their contents simply to gratify his curiosity, or he might have got hold of them for the purpose of getting information on matters with regard to which his mind was entirely blank, and on which he was going to fabricate a false structure; but, whether he wanted them from curiosity or for some baser motive, I unhesitatingly ask you, would it not have been right and proper for you to have information given to you as to whether he had ever seen one of them? You do not know whether he did or not. [*The Lord Chief Justice, who had been absent from the bench all the morning, took his seat at this point.*] Do not be led away by presumptions. You may be told that, because his Lawyer had these documents, you must presume that he read them; but we find the Defendant stating on his oath at the last Trial, when questioned with regard to a list of the Jesuit fathers at Stonyhurst, that "if Mr. HOLMES had it, he certainly would not have allowed me to see it." This is a statement which reflects credit upon Mr. HOLMES; therefore they ought to have been extremely anxious to call him. The presumption put before you by Mr. HAWKINS is this: "Oh! the list of Jesuit fathers was got for the purpose of coaching the Defendant as to who were the Directors at Stonyhurst during the time ROGER TICHBORNE was there, and whatever information he got with reference to Stonyhurst he obtained from the list." Here is the Defendant swearing that he never saw the list; then, if his statement is untrue, why does not Mr. HOLMES get into the box and say, "I procured the list and gave it to him"? When he swore, in answer to the Solicitor-General, that "I would not allow him to see it," he is swearing that which is untrue. I don't mean to reflect upon the Prosecution at all; but is it not a strange thing to ask you to form suppositions on matters of this kind—matters fatal one way or the other? I must ask you, in this Case, to dismiss wholly any supposition of a guilty act done by the Defendant in connection with HOLMES or ROUSE that is not supported by proof. I do not know, Gentlemen, what I ought to say upon the law as it has been acted upon by the Court in this matter of the transactions between HOLMES and the Defendant. In ordinary cases, where a man is charged with a criminal offence, he has only his own act to answer for. That is so in cases of robbery and homicide; but, in this case, according to the law laid down by the Court, the Defendant is criminally answerable for the acts of Mr. HOLMES. If HOLMES writes a letter which is the suggestion of his own mind in the conduct of his Client's Case, a letter that is foolish or indiscreet, that is read against the Defendant as though it were written by himself. I must take that as the law because it is laid down by this Court, but, with all submission, I think it is certainly a dreadful view to take.

The LORD CHIEF JUSTICE: You say it is laid down, but it is a mistake. We have not laid down anything of the sort.

Dr. KENEALY: I am glad to hear you say that, my lord. I understand that they are admissible, because they prove the guilt of the Defendant?

The LORD CHIEF JUSTICE: They are admissible, simply

because they relate to what becomes evidence, with what I said.

Mr. Justice MELLOR: They were letters written long ago, and prove particular facts not connected with this criminal indictment.

Dr. KENEALY: Mr. HOLMES must have written numerous letters with regard to which he never had consulted the Defendant. In Civil causes, letters written by the Solicitor as the agent of the Defendant are binding; but this is a Criminal cause, I must remind you, and yet letters have been put in relevant to the issue "Guilty" or "Not Guilty." The Crown would not have put them in to prove that the Defendant was innocent. If it be true, then, that the letters were admitted as proof of his guilt, is that not a most dreadful view of the case? I may have an ignorant, blundering, bribed, and guilty attorney, who may write a letter because he has those three characteristics, and it may be put in against me. Such a course as this I cannot but deprecate. The letters written by Mr. HOLMES may have been utterly unauthorised by the Defendant. Day by day we have had letters of Mr. HOLMES put in and read; but we have not had the writer examined as to the Defendant's knowledge of them, or to throw light on the matter in any way. If he had been, I should not have objected to the letters being read against the Defendant; but what I do object to is, that these letters, which are wholly unauthorised, should be put in and read against the Defendant.

The LORD CHIEF JUSTICE: HOLMES was the Defendant's lawyer.

Dr. KENEALY: There is no doubt that he wrote them, and in a Civil action they would be admissible against the Defendant.

The LORD CHIEF JUSTICE: But he was authorised, you know.

Mr. Justice MELLOR: In that respect there is no difference between a Civil case and another case. If a letter is written to impeach the Defendant, you must show not only that it was written by the attorney, but done by his authority. But these letters were written long before the Prosecution was ever thought of.

Dr. KENEALY: It seems rather hard law. A guilty inference is drawn from those letters.

Mr. Justice LUSH: You seem to be falling into the error into which you fell the other day, namely, that whatever was admissible in the suit to prove that he was ROGER TICHBORNE is admissible in this Prosecution.

Dr. KENEALY: I have done all that I can to penetrate the cloud of that fallacy; but my mind is so dull that I cannot succeed. I differ from my lords, Gentlemen; and therefore I must be wrong. I principally complain that the Crown does not use Mr. HOLMES; that they do not put him into the box, and get from him the Defendant's knowledge of these letters. There is another gentleman whom I was anxious to see in the box, and that is Mr. BOWKER. We have had a vast number of letters produced by him. He it was who produced that most remarkable letter of Mr. JAS. TICHBORNE to Mr. SEYMOUR; a letter that was proved on the 9th of June. This was only one of a series produced by that gentleman, and when the last of them was read I said, "These letters were never heard of, and to some extent came upon me by surprise." I wanted to know from whose custody they came, and was informed by Mr. HAWKINS that they had been obtained from Mr. BOWKER, who, it was said, would give information on the point when he was examined. I should have thought this would have induced them to put Mr. BOWKER into the box. I should have thought that that gentleman would have had the same avidity to come into the box that Mr. HOLMES should have had. Charges were made against him by the Defendant, and is it not what every one of you would have expected, viz., that he would have come into the box and indignantly denied those charges? It seems to me that Mr. BOWKER has taken too prominent a part in this Case to refrain from giving evidence. He has had interviews and conversations with Witnesses, and has shown them photographs, and, for his own sake, I do say that he ought to have been anxious to get into the box to refute the charges made against him. How did Mr. BOWKER get possession of the letters? You have heard a great many insinuations in the Case that the Defendant may have got hold of letters and memoranda of ROGER TICHBORNE'S. Would you not have liked to get from Mr. BOWKER, then, whether the Prosecution did not get hold of the papers of Sir JAMES TICHBORNE, carefully treasured by the dead wife? You have heard that ROGER TICHBORNE kept a diary, and if he did, is it not likely that they would be placed in the box at Winchester by Lady TICHBORNE? I should, therefore, have liked to know from Mr. BOWKER whether he has these memoranda or not, or whether they were taken away, and if so, by whom? I should have liked to have known the contents of that box of which we have heard so much, but we only have those of the contents which Mr. BOWKER thinks it advisable to produce. There is another point on which you would have liked to have seen Mr. BOWKER. I call your attention to a part of the cross-examination of BOGLE, in which he is asked whether the Defendant did not ask him to make some inquiries about the pictures at Tichborne House. The object of that question was to insinuate to your minds that the Defendant, being fresh in England, was anxious to ascertain, through his trusty co-conspirator or coadjutor, the names and descriptions of the pictures at Tichborne House, that he might afterwards use the information for the purpose of showing that he had a knowledge of the contents of the mansion—a perfectly legitimate object if it were correct. The Defendant, however, made the inquiry because he had been informed—I don't know whether rightly or wrongly—the first time he went to Alresford, that certain pictures had been improperly sold by Mr. BOWKER or some person acting under his authority.

The LORD CHIEF JUSTICE: Does he say that, Dr. KENEALY?

Dr. KENEALY: Yes; at page 1,579, in the printed evidence, my lord. He said he saw Mr. BOWKER at Tichborne House; that he took up a catalogue of pictures which had been disposed of, and said, "Can you tell me how these have been sold?" that not receiving a satisfactory reply he said to Mr. BOWKER—"If you do not go out of the room I shall be under the painful necessity of kicking you out," &c.

The LORD CHIEF JUSTICE: The Defendant talks about selling pictures, but what pictures have been sold? I do not recollect the passage.

Dr. KENEALY: I shall read it:—

"The next morning, the first day of the year, 1867, did you see Mr. FREDERICK BOWKER?—No, I think it was previous to that; it was on the Monday that I saw him.

"I do not know about Monday or Tuesday; was it the fifth day that you were at Alresford?—No, the third day that I was at Alresford—the third or fourth day.

"Was BOGLE there?—Was BOGLE there?

"Yes?—Yes, he was there that day.

"Then it must have been after BOGLE came?—Yes, it was after BOGLE came.

"I thought we had agreed that he came on the fourth; then if it was after he came it must have been either the fourth or fifth?—Yes, that is so; I am not certain about the date. You have got the dates there, I have no doubt they are correct.

"Did you let him?—He came hammering at the door in a very rude manner. I opened the door and asked him what he wanted.

"Did he tell you he was the agent for the Tichborne Estates, and hearing you had been at Tichborne yesterday he had to say he should be happy to give you any information about them?—Those were not his words.

"Was that the purport of what he said?—No, I will tell you his exact words.

"You shall tell me in a moment. I will give my version and then you shall give yours. Did he ask you what your business might be?—He did not.

"At Tichborne?—He did not.

"Did you walk away from him towards the fire, saying to him at the same time that you were Sir ROGER TICHBORNE?—The way you put it, and the way it happened, are two different ways.

"That is the way I put it; now you may put it your own way?—He came and hammered at the door in a very violent manner. I asked him what he wanted; he said, 'I hear you are a friend of Sir ROGER TICHBORNE; if so, I am agent of the estates, and if I can give you any information about them I will do so.' He said 'Perhaps you are Sir ROGER TICHBORNE.' I said, 'I am.' He said, 'I shall be happy to furnish you with any information you may require, and give you the means of doing so.' I turned round and said, 'are you not agent for my brother's wife?' 'Yes,' he said, 'I am.' I said, 'what do you mean by offering me what information I wanted?'

"I will not dispute that with you: at all events BOGLE was there?—Yes, he was there.

"Did you know who he was?—Did I know who he was?

"Who Mr. BOWKER was?—No, I did not.

"I did not mean know him by sight. Did you know who he was—that he was the Attorney for the Tichborne Estates?—Yes, I did; I saw Colonel NICHOL and himself drive in, and I asked the girl who he was; I was told.

"You were told by Colonel NICHOL?—No, I was told that he was Mr. BOWKER, and that he was agent for the estates.

"Did you give any directions as to whether he was to be admitted to you or excluded from you?—Yes, I did. I gave directions he was not to be admitted.

"The LORD CHIEF JUSTICE: Mr. BOWKER was not to be admitted?—Yes, my lord.

"Which, FREDERICK or JAMES?—FREDERICK, my lord.

"The SOLICITOR-GENERAL: Did you direct BOGLE and ROUS—either of them, or both of them—to say there was none there, except a gentleman of the name of TAYLOR?—I did nothing of the kind; in the first place I had not seen BOGLE after his arrival, and in the next place ROUS was out rabbit-shooting.

"The LORD CHIEF JUSTICE: You did not tell anybody to say there was no one there but a gentleman of the name of TAYLOR?—I did not.

"Was your door locked?—I turned the key myself.

"Locked?—I turned the key of the sitting-room door, my lord.

"The SOLICITOR GENERAL: However, Mr. BOWKER finally saw you?—Yes he did. He had all the papers in his hand. I said, 'What do you mean by offering the papers to me?' 'Well,' he said, 'if you are ROGER TICHBORNE she has no business with them, and that would not hinder me taking up your Case.'

"That is what Mr. BOWKER said to you?—He went on offering to give any information. I certainly did walk over towards the fire-place and stood by it, and taking up a catalogue of some

pictures in Tichborne House that had been sold, I said, 'How came these pictures to be sold?' I said, 'As you know so much about that can you tell me about these?' He said, 'I know nothing about that.' I said, 'If you know nothing about that, I will have nothing to do with you.' He took up the paper in a most impertinent manner, and said, 'Is there anything in the paper?' I said, 'If you do not go out of the room I shall be under the necessity of kicking you out.' He then left the room.

"That was your first interview with Mr. BOWKER?—Yes.

"*Now I will put you my version.* Were you smoking at the time and drinking a little brandy-and-water when Mr. BOWKER saw you?—That I cannot say; I should think the probability is that I was doing both.

"I said a little—perhaps it was more than a little?—I certainly cannot say.

"After you said you were ROGER TICHBORNE did Mr. BOWKER tell you that he was acting for the guardians of the infant, and that he should not allow you, or any other person, to interfere with or to trespass upon the estate?—He said nothing of the kind, and, what is more, it was more than he dared say in my presence at that time. At all events he did not. He did not say it because I had not interfered in the estate in any sense.

"Did you say in answer to him, that as to that you expected Lady TICHBORNE, your Mother, the next day, and that you should occupy the estate?—I certainly did not.

"Nothing of the sort?—I never spoke to him about my Mother at all; her name was never mentioned.

"Did you then say you should apply to your Solicitor?—I did not.

"And did Mr. BOWKER ask you your Solicitor's name and address?—He did not.

"And did you take some letters out of your coat pocket and say that the name was WELLS—that is of your Attorney—the name of your Attorney was WELLS, but you could not tell his address?—I did not.

"Nothing of the sort?—Nothing of the sort; there was nothing more passed than what I have stated.

"Was the name of WELLS mentioned?—To Mr. BOWKER?

"Yes?—No.

"Mr. Serjeant BALLANTINE: He said nothing passed but what he told you.

"The SOLICITOR-GENERAL: Was there a WELLS mixed up with you as an Attorney?—No.

"Did you not even know the name of WELLS?—Yes, I know the name of WELLS.

"Did you mention it to Mr. BOWKER?—I did not.

"What was WELLS? How did you know him?—I never knew him at all; you asked me if I knew the name of WELLS, I said yes.

"Did you never know a person of the name of WELLS at all?—No, I knew the name of WELLS well enough.

"Was there amongst the papers you had in your hands a letter from Mr. JAMES BOWKER, and did you ask Mr. FREDERICK BOWKER whether he was the Mr. BOWKER mentioned in that letter?—Certainly not. I never received any letter from Mr. JAMES BOWKER.

"Did Mr. BOWKER say—'No, the letter is from Mr. JAMES BOWKER, my brother, the Dowager Lady TICHBORNE'S Solicitor'?—No, certainly not.

"Did you leave Tichborne that day?—Alresford?

"Yes, I mean Alresford that day?—I cannot say.

"Cannot you?—I cannot say whether it was that day or the next.

"Cannot you tell me?—I think it was the next day. I am not certain.

"Did you not leave Alresford the same day and very shortly after you had seen Mr. BOWKER?—Certainly not. I saw Mr. BOWKER in the morning. I did not leave before the 7 o'clock train at night, so that could not be.

"Of course, if that be true, it could not be?—If I left on the same day I mean. I am under the impression that I did not go up at all that day. I am quite certain of this: the train I left Alresford by was the 7 o'clock train, and I arrived in London a little past 9.

"That may be. What I ask you is whether after the conversation I have been suggesting as having passed between Mr. BOWKER and yourself, you did not forthwith leave Alresford?—Certainly not."

Gentlemen of the Jury, observe that after all this flourish of the Solicitor-General about "my version," not a word do they venture to ask BOWKER about this pretended "version" of what took place. Who is WELLS? Is all this moonshine? Where is BOWKER, to tell us why and how he came to put this imaginary conversation into the Solicitor-General's brief? Where is BOWKER to deny the "version" which has been given by the Defendant. BOWKER is every day in Court, with his son, and his Clerks—but when the tug of war comes, and BOWKER is wanted, he is nowhere.

Now this conversation shews you what was in the Defendant's mind at the time, and why he requested BOGLE to go to TICHBORNE. That is the innocent interpretation of it. The Prosecution seek to give it a guilty interpretation. I should have liked to have asked Mr. BOWKER certain questions about those pictures, but I had not the opportunity. It may be that if they had put him into the box, his evidence would have been in their favour. I do not know whether it would or would not, but, at any rate, for the satisfaction of the Jury, he ought to have been called. Now, Gentlemen, I ask you to contrast this conduct on the part of the Prosecution—which I have no doubt would be called "sharp practice," but, for my own part, I think "sharp practice" in Criminal Courts is rather to be excluded than admired—with the conduct of the Defence when an imputation was sought to be cast upon the legal advisers of the Defendant with reference to MARY ANN NEAL. It was insinuated that certain information had been extracted from her by them—with reference to the tandem accident, I think—so that the moment the Defendant saw her he was able to answer her upon that particular matter. I hope I satisfied you that they had not been wicked enough, or imprudent enough, to make any communication to the Defendant as to what they had heard from MARY ANN NEAL. There was a challenge given by Mr. HAWKINS, and taken up by me, and I ask you to contrast that with what has been done by the Prosecution. Day after day have I been challenging them in the same way, but without result. I was perfectly conscious of the fact that those who instruct me were guiltless of such a transaction as that imputed to them. They proved their innocence, and I am glad to say that after that the Prosecution made no further insinuations against them. BOWKER, ROUSE, and HOLMES will endure any amount of challenging before they will present themselves here. There was a famous person at the Trial of Queen CAROLINE called Baron GRIMM. He was a person who went about Europe to procure what we know now was false evidence against that unhappy Princess. At the Trial it was remarked with great justice that Baron GRIMM, who was the foundation of the whole charge, did not present himself for examination before the House of Lords, and Lord BROUGHAM, who conducted the defence of the Queen, made more than one allusion to the Baron's absence. I think I may with equal justice complain that a person who has been getting up evidence—I won't say similar to that of Baron GRIMM, but evidence against the Defendant—has not been put into the Box. I say again, where is Lord ARUNDELL—JOHN FRANCIS ARUNDELL of Wardour, the grandson of Sir HENRY TICHBORNE, and the half-brother of Lady ALFRED TICHBORNE? He confines himself to Wapping. (Laughter.) The air of the Queen's Bench is too delicate for his constitution. There is another gentleman from Stonyhurst I should like to have seen, as he could have given us valuable information—I mean ROGER'S schoolfellow, EVERARD ALOYSIUS GONZAGA, whose name is in ROGER'S will. He could have told us a great deal about ROGER TICHBORNE if he had liked. When I come to call your attention to the evidence about the Stonyhurst Witnesses you will be astounded to find that they produced persons from there who knew hardly anything about ROGER TICHBORNE, in the same way that they produced Wapping Witnesses who knew scarcely anything of ARTHUR ORTON. Surely, Lord ARUNDELL of Wardour, who saw ROGER TICHBORNE almost every Sunday, and EVERARD GONZAGA, who must have been in constant communication with him, could have given evidence of a most important character, and why they have not been called is another of those mysteries which I cannot penetrate. He has a tutor for three or three-and-a-half years at Paris who could have told us all about him. I allude to the man who is called JOLIVET, and sometimes JOLIVAL. Mrs. NANGLE refers to him, and says she thinks JOLIVAL lived in the same house as ROGER TICHBORNE. There is another man—General DE BRUNO—who appears to have lived in the same house; and then Père HUMBERT, who prepared the youth for his first communion, and must have noticed all those traits in the child which we should expect to find in the man, was a person whom we ought to have had in the box, but he was not called. Nor have we seen M. LE FEY, although we have seen Père LEFEVRE.

The LORD CHIEF JUSTICE: The reference is clearly to the same person, under two different names.

Dr. KENEALY: M. LE FEY is mentioned also at the Law Institute, and he is named as one of his most intimate friends.

The LORD CHIEF JUSTICE: There was no such person as M. LE FEY.*

A JURYMAN: You made allusion to this matter in your previous Speech.

Dr. KENEALY: I am ready to take that as your lordship's statement, and as I am reminded by a Gentleman of the Jury that I have referred to this matter before, I will not prosecute it further now. I may be asked why I did not call MOORE? I will explain why I did not do so. He was produced by the advisers of the Defendant at the former Trial, but I did not consider myself bound by the course pursued by them, and for this reason. There was an ill-feeling against MOORE, and it is never wise to call a Witness who may turn out unfriendly. That ill-feeling broke out at the last Trial, when Defendant said that he had had a few words with MOORE on board the ship about keeping a diary, when he told MOORE he would not have anything put down about him. The Defendant was asked, "Do you remember any difference which you had with MOORE on the voyage out?" to which he replied, "Yes." "What about?" he was asked, and he is reported to have said, "About my keeping a diary." The word "my" is evidently a mistake; the word should be "his." There are many misprints of the same kind in the official report.

Mr. HAWKINS: The whole of the transcript has to be made and the report printed during the night.

* Evidence again from the L. C. J.

Dr. KENEALY: Yes—but the report is most remarkable for inaccuracies. Here again in this you see is the secretiveness of the old ROGER, which, like many other little things crops up to establish his identity. In one of ROGER TICHBORNE'S letters from South America MOORE is spoken of as a species of spy. [The learned counsel then cited evidence of the Defendant in which he said, "I had an idea that he (MOORE) wrote home to tell them what I was doing."] I have already suggested to you that the life which this young man led in South America was a very different sort of life from that which has been suggested on the other side; and I can very well understand his not liking his adventures to be written down by MOORE. These passages will show my reason for not calling MOORE, but there was no reason why the Prosecution should not put him in the box. MOORE had been the old servant of ROGER TICHBORNE, and a man trusted by Lady DOUGHTY—in fact, an old retainer of the family.

The LORD CHIEF JUSTICE: He was a young servant. His father was an old retainer, and was allowed a pension.

Dr. KENEALY: At all events it was at GOSFORD'S or Lady TICHBORNE'S suggestion that this young man was brought in attendance upon him.

The LORD CHIEF JUSTICE: Because he was the son of an old servant.

Dr. KENEALY: He was a person who had no actual ill-feeling of any sort to either Lady DOUGHTY or GOSFORD. In fact, GOSFORD actually recommended him to the service of ROGER TICHBORNE. Now, if MOORE was unable to identify the Defendant with ROGER TICHBORNE, why did not the Prosecution call him?

Mr. Justice MELLOR: As he was called before on the part of the Defendant, the natural expectation would be that they would call him again.

The LORD CHIEF JUSTICE: Do you really contend that when a man has been called as a Witness on one side, and has given favourable evidence on that side, because for some reason or other Counsel for those who called him before does not think it right or expedient to call him again, the other side ought to call him? That is contrary to my experience in Westminster Hall. Was not the Defendant cross-examined as to his relations with MOORE since he arrived in this country?

Mr. HAWKINS: Certainly.

The LORD CHIEF JUSTICE: And Dr. KENEALY wants to shunt him now over on you.

Mr. HAWKINS: Your lordships will remember that MOORE was called into Court on the part of the Defendant whilst Mr. BINGLEY was under cross-examination.

Dr. KENEALY: The way the dilemma presents itself to my mind is this. The Prosecution had the means of knowing whether he could identify the Defendant or not, and if upon reconsideration he could not identify him he would have been a good Witness for them. I say they knew perfectly well whether MOORE was able to identify the Defendant or not. If through subsequent examination he was convinced that he was previously wrong he would have been a valuable Witness.

The LORD CHIEF JUSTICE: If he had said that he had changed his mind his evidence would not have been of much value.

Dr. KENEALY: They could have got from MOORE whether he recognised the Defendant as ROGER TICHBORNE or not.

The LORD CHIEF JUSTICE: A man who has already identified a person cannot be expected to get into the box again and say he was mistaken.

Dr. KENEALY: He might be able to give the most conclusive reasons for changing his mind. However, I did not choose to run any risk in calling him, and I supplement this, as I supplemented my remarks with regard to BAIGENT, by saying that I did not think it necessary to call him. Would MOORE or BAIGENT have turned the scale if my two hundred Witnesses had not been sufficient to do so? I do not think either of them would. Gentlemen, nothing seems more ridiculous than to desire addition to the enormous mass of evidence I have put before you; and I submit that I have proved and established, first of all, that the Defendant is not ORTON, and, secondly, that he is TICHBORNE. The number of Witnesses I have called on the first subject I do not remember, but I think the Prosecution have called forty-eight.

The FOREMAN: A few more. There were fifty.

Dr. KENEALY: Can you tell me how many Witnesses I have called against that?

Mr. Justice LUSH: You called fifty-eight, as against forty-eight, to negative the ORTON theory.

A JUROR: We have only had 560 Witnesses altogether. (Laughter.)

Dr. KENEALY: It is the only time in your life you will ever have such a number. (Laughter.) That is the sole consolation I can give you. Gentlemen, there is a peculiarity attending this Trial which does not usually attend Trials of a criminal nature, and it is a peculiarity which has not been suggested to you before. It is a general rule of English law that while a Civil cause is pending the Crown will not suffer Criminal proceedings to be taken; and that is a rule founded on strict justice. It was perfectly well known, or might have been easily ascertained, that the nonsuit in the Common Pleas, which was the result of the intimation of the Jury, could hardly be considered final.

Mr. Justice LUSH (who had been examining his notes): Dr. KENEALY, you called 58 Wapping Witnesses against 48.

Dr. KENEALY: I am much obliged to your lordship. Gentlemen, to tie up the lips of one of the parties, and that the most material party in the cause, by a Crown prosecution, was, I say, a violation of all justice. While a Civil cause is still pending magistrates invariably refuse to countenance Criminal proceedings.

The LORD CHIEF JUSTICE: If you were prepared to contend that the Civil Trial is not over, you should have applied for a postponement until the recommencement of the Defendant's suit, and its being brought to Trial and disposed of. The Court would have considered that a very reasonable application. In this Case, for all practical purposes, it had come to an end; and this Trial became necessary because, if the Defendant was guilty *prima facie* of perjury, his Trial could not stand over to some future epoch—to the Greek Kalends.

Dr. KENEALY: If such an application had been made, probably your lordship would have granted a delay of twelve months.

The LORD CHIEF JUSTICE: Then why was it not made?

Dr. KENEALY: My lord, in this Case we have "left undone those things which we ought to have done, and done those things which we ought not to have done." (Laughter.)

The LORD CHIEF JUSTICE (with marked emphasis): I don't dispute that. (Much laughter.) I repeat that if there was any idea that injustice would be done by having Criminal proceedings commenced before a second action of ejectment could be brought, there should have been an application to the Court to suspend the Trial. No such application was made.

Mr. Justice LUSH: Is it not now more than twelve months since this Trial began?

Dr. KENEALY: Yes; but it did not then occur to the advisers of the Defendant that such an application should be made.

The LORD CHIEF JUSTICE: I think it would have been a very reasonable application, if there had been affidavits, or something to satisfy us that the application was made with a *bona fide* intention of resuming the Civil proceedings, and if the costs of the Civil proceedings had been paid. But you must not blame the Prosecution.

Dr. KENEALY: I am not doing so, my lord. I am pointing out a point which I consider worthy of consideration in the Case.

The LORD CHIEF JUSTICE: But you must not blame the Prosecution, I repeat.

Dr. KENEALY: Gentlemen, perhaps it would be wiser for me if I were to blame the Prosecution for nothing. And yet I can scarcely be expected to become their eulogist. Regarding their conduct as I do, I can hardly crown them one and all with evergreens or laurels. I never can forget that before they saw this man they treated and even denounced him as an Impostor; and I think they regarded him as a criminal who might be safely and conscientiously hunted down. They come before my mind's eye like those hungry wolves that follow the wayfarer through the forest. There is hardly any effort which their agents have not made for the purpose of his destruction. We are told "*By their fruits ye shall know them*," and what are the fruits presented here? I will not take you again to inspect that banquet of poisons. My words have been indeed as wind if you do not behold every envenomed dish plainly before your eyes.

[The Court then adjourned for luncheon.]

On its reassembling,

Dr. KENEALY continued: Gentlemen of the Jury, I make no complaint against the Prosecution because an application for the postponement of this Trial was not made; but I am bound to comment on it in this way, that in England there is so much admiration for her Majesty's Judges that a man committed by one of them to take his Trial comes into Court under the greatest disadvantages. The general impression of a Judge in England is that he can do no wrong. I am sorry to have to say to you that you must not regard the committal of this Defendant by the late Lord Chief Justice in the important light in which you would have been entitled to regard it if he had not violated that rule of law and justice which I hope will ever prevail in England.

Mr. Justice LUSH: You are aware that by a modern Act of Parliament that power is given to every Court.

Dr. KENEALY: Yes, it is given; but I am proud to say it is very rarely exercised.

The LORD CHIEF JUSTICE: I don't know about that. Where a judge is satisfied perjury has been committed, he is bound to commit the offender for Trial, and the late Lord Chief Justice was bound to exercise the power he possessed at the time he did or never. I have myself exercised it where there was *prima facie* reason to believe that perjury had been committed in a Civil suit, although the verdict might possibly be set aside on a new Trial. I did not hesitate to do that because I knew that if there were a new Trial there would be an opportunity of applying for the postponement of the prosecution; while, on the other hand, if he were not committed at once, the man might have escaped just punishment. I cannot concur in the censure just pronounced on my late lamented brother who directed this Prosecution, nor do I admit that there was in that any violation of a rule of English law.

Dr. KENEALY: I don't deny he had the power; but what I am venturing to submit is this: that it would have been wiser, probably more judicial, if he had abstained from exercising it. It is a power that might be exercised in moments of heat or indiscretion, or without full consideration, in a manner that might do

the utmost injustice. It is impossible to over-estimate the inconvenience of actions of this kind.

Mr. Justice Lush: I think he acted rightly.

Dr. Kenealy: I submit that he would have acted more wisely and more judiciully if he had abstained from exercising the power which the Legislature had thought fit to give him, and if he had not sent this charge to this Court indorsed with his view that the Defendant was a perjurer.

The Foreman: You cannot imagine that the Jury are prejudiced by that.

Dr. Kenealy: Well, the committal by a judge is a thing I always dread to think of; for it is almost ruinous to a man.

The Lord Chief Justice: The judge is bound to commit if he thinks *prima facie* there is a Case. Does it really come to more than this, that the judge thinks there is a *prima facie* Case for prosecution?

Dr. Kenealy: But a judge is different from a magistrate. I am not saying there may be any well-founded reason for it, but the distinction is so great between a magistrate and a judge that people think the latter can do no wrong. Here, Gentlemen, I think a wrong has been done. I don't wish to say anything which might be considered derogatory to the memory of the dead; but I must ask you, if there is a feeling in your mind occasioned by the committal by a judge instead of a magistrate, I mention it to put you on your guard. I may appear to be repeating myself by putting before you the same ideas in different lights, because to my mind the idea is perpetually recurring. My lord has said, "Why are we to try this man by rules different from anyone else?" I don't deny the force of that argument, and I dare say the reflection has occurred to every one of you. I must endeavour to meet it. And the way I endeavour to meet it is, that this man is an exception to the ordinary rules. If he were not, I would say, judge him by the ordinary rules. But if he is the man, his life is an exception to the general rules of society. There have been wild men before like him, and particularly in this country, which is remarkable for producing more diversity of character than any other country in the world. Take Bampfylde Moore Carew: he was the son of a gentleman of ancient standing and lineage in one of the western counties. He represented a name and a family which had existed in his county for centuries. One of his relations was the Earl of Totnes. His father was a most pious and reverend clergyman. He was an accomplished scholar, remarkable for his personal beauty and the possession of every earthly good, and yet, with all these grand advantages before him, Bampfylde Moore Carew became a beggar, a wanderer, a gipsy, and finally the King of the Gipsies. Now, what are we to say to him? Are we to judge of him by the ordinary rules? Surely a life like his is not to be adjudicated upon in the sense that we would adjudicate upon Dick, Tom, or Harry. We should not try him by the same rules as we would Brown, Jones, or Robinson. Again, if we comtemplate the career of Lord Byron and many other great poets, we don't try them by ordinary rules, but we make allowances for their eccentricities. The delight of this man, Carew, was to go about in perpetual disguise, to veil the gentleman, to live with persons of a far inferior class to his own, to have coarse adventures, to investigate human nature in the lowest vein, to live in pot-houses and under trees. He had everything a man could have to induce him to return to his home, but he preferred the wild life to which he had given himself up. If the Defendant had been the first man guilty of wildness and folly and eccentricity, you might have declined to accept his story; but when others are shown to have done similar wild, foolish, and eccentric things, I submit you should pause before deciding his tale is false because it is marvellous. One of Carew's intimate friends was a nobleman, Lord Weymouth, who had a similarity of tastes and fancies, and who used to travel about the country, sometimes as a sailor and sometimes as a beggar, acting his part so well as to mix in the company even of sailors and beggars without being discovered. This is another man we would not judge by ordinary rules. Then I have no doubt you have all read of the wonderful career of Lord Peterborough. This nobleman left a memoir in which he said he committed three capital crimes before he was twenty-one, but the document was destroyed by his widow as not calculated to redound to his credit. He was one of the eccentric lights that were always flashing about during the last century. No historian would judge him by the same rule as he would judge the Duke of Wellington. Yet he was as great a warrior in his day as the Duke, and was second only to the Duke of Marlborough, who was a staid, solid, and wise man like Wellington. An account is given of him going to dinner at the Guildhall, and on seeing a French dancing-master in silk stockings on the way, getting out of his carriage, and, sword in hand, driving the poor man through the mud. (Laughter.) And that Lord Peterborough looked upon as a good joke.

The Lord Chief Justice: But you must remember, Dr. Kenealy, that he was cracked (a laugh).

Dr. Kenealy: He was a great warrior, and of high reputation.

The Lord Chief Justice: He was a remarkable man, but his acts were a long way out of the common order of things.

Dr. Kenealy: Well, perhaps it was so, but yet Swift says of him, "Mordanto fills the trump of fame." It is also related of this nobleman, that when he entertained company at his house, he did his own cooking; and Philip of Orleans, the Regent of France, is known to have done the same thing. That surely was a low taste. Mr. Hawkins says this man cannot be a gentleman because he acted as a butcher; on the same ground it would have to be held that Lord Peterborough and Philip of Orleans could not be gentlemen because they acted as cooks. Again, it is related of Swift that, after conversing with Addison and St. John (afterwards Lord Bolingbroke), and Matt Prior and the greatest wits and and scholars of his day, he used to go and sit in a low pot-house and smoke his pipe, drink his tankard of ale, and speak to all the lowest people who frequented it. Addison accounts for this extraordinary proceeding on the fanciful ground that, having elevated his mind to a high pitch, he was compelled afterwards to lower it in order to restore the equilibrium; but I don't think we can accept that as a satisfactory explanation. Much the same idea was conveyed by the late Mr. Justice Maule, who said that whenever he had a great legal question to argue, he always drank a pot of porter in order to lower his mind to the level of the Judges. (Laughter.) You can call this crackedness if you like; and I say if this is Roger Tichborne I consider him cracked. Then a great deal has been made of the clothes this man wore; but open the life of Lord Nelson, and you will find that at the time he was at the height of his glory, he used to walk about in his own house dressed in such a manner that the painters or other workmen who happened to be employed in it used to ask him to assist them in doing various things, and offered him something for doing it. I don't know whether any of you are old enough to remember the extraordinary pranks of a late Marquis who possessed an Irish title.* His latest performance was to go through the form of fighting a duel with a cobbler, and, probably because he found it difficult to do anything more absurd, that ended the extraordinary things he was in the habit of doing in the Haymarket. He may have been cracked too; but I say all these things should make us pause before coming to any hasty conclusion about this man. Again, in reading Sir Walter Scott's "Tales of a Grandfather" the other day I came across the mention of a Scotch earl (Lord Winton) who seemed to be a Tichborne of the last century. I call him a Tichborne because I think that would do as a generic name for people who do these wild and foolish things. Sir Walter Scott says in the 68th chapter:—

"The leader of the East Lothian Troop was the Earl of Winton, who had lived a long period as bellows-blower to a blacksmith in France without holding any communication with his family; but if we judge from his conduct in the Rebellion he seems to have displayed more sense and prudence than most of those who were engaged in that unfortunate affair."

If we were trying him should we judge of him by the ordinary rules? A parent with many children of various dispositions makes allowance for the diversities of their temperaments; and so, in trying criminals, similar allowances should be made. We know that the case of this man is, that he has done things which no other man of his time has done.

Gentlemen, when you consider the marvellous circumstances of this Defendant's career, beware of falling into a prevalent error, that that must be false which does not generally accord with our own limited knowledge or experience; or with the opinions of things which we may have formed. In all ranks and conditions of life persons of this stamp abound, and the errors to which their habits of distrust expose them are at times sufficiently ridiculous. Thus the King of Siam rejected the testimony of the Dutch Ambassador, that in his country water was congealed into a solid mass; for it was utterly repugnant to his own experience. In like manner the marvellous but true stories narrated by the Abyssinian traveller, Bruce, were long considered by his countrymen as mere fictions; and within the last few years the evidence given by the late Isambart Brunel before a Parliamentary Committee was much impaired by his having ventured an opinion that steam carriages might possibly travel on railroads ten miles an hour. A contemplation of the instances now given, and of others which will readily occur to the hearer, naturally suggests two reflections: first, that with our finite knowledge we should be slow to reject a narrative as incredible merely because it is beyond, or even contrary to, our limited experience; and next, that progress in knowledge is not confined in its results to the simple facts ascertained, but has also an extensive influence in enlarging the understanding for the further reception of truth, and in setting it free from many of the prejudices which influence men whose minds are limited by a narrow field of observation. Thus Archimedes, deeply imbued as he was with science, might have believed an account of the invention and wonderful powers of the steam-engine which our unscientific countrymen of the last century would have rejected as incredible and absurd. In this way you have been dealt with in this Case. You are called upon to disbelieve this Defendant in all things because he has acted foolishly, or because he has done things which do not accord with the common experience of mankind. But this, as what I have cited shews, is not always a wise principle upon which to form judgment.

Let us take into account the life of Savage, one of the most extraordinary characters that ever lived. His mother while pregnant of him declared that the child which she was about to bear was not that of her husband, and got divorced from her husband before the boy was born. The boy was born under the

* The Marquis of Waterford.

most unhappy circumstances; but he turned out to be a person of extraordinary powers of intellect—which powers as a rule were wrongly directed. JOHNSON knew him well—indeed, better than anyone else—and he tells us that he lodged as much by accident as he dined; passing the night sometimes in mean houses, and amongst the commonest and most depraved of the rabble, and at other times wandering about till he was tired, and then lying down on a bulk in a cellar, or in cold weather on some heap of ashes. That man—the son of the Countess of MACCLESFIELD, and, as she said, of Lord RIVERS, but as others who have investigated the matter say, her own husband—wasted powers of intellect that JOHNSON says might have guided statesmen, and powers of eloquence that could have influenced senates, by mixing with the vilest of the vile. Suppose SAVAGE were brought up before us, would we not make great allowance for his eccentricities? I ask you to make similar allowance for a man like the Defendant. I ask you not to judge him by isolated incidents in his career, but to take a philosophic view of his whole life. But my examples of wildness and eccentricity are not exhausted. DRYDEN speaks of the Duke of BUCKINGHAM as being:—

> "A man so various that he seemed to be
> Not one—but all mankind's epitome;
> Stiff in opinion—always in the wrong;
> Was everything by turns, and nothing long;
> But in the course of one revolving moon,
> Was chemist, fiddler, statesman, and buffoon;
> Beggared by fools, until he found too late
> He had his jest, and they had his estate."

Need I remind you of the Duke of WHARTON, of whom POPE in his *Moral Essays* wrote:

> "WHARTON, the scorn and wonder of our days,
> Whose ruling passion was a lust of praise,
> Born with whate'er could win it from the wise,
> Women and fools must like him or he dies.
> Though raptured senates hung on all he spoke,
> The Club must hail him Master of the Joke.
> Grown all to all, from no one vice exempt,
> And most contemptible to shun contempt,
> Ask you why WHARTON broke through every rule?
> 'Twas all for fear the knaves should call him fool."

And often, when I have seen this wild man joining in a fit of laughter—laughing most heartily among all here—at some buffoonery calculated to do him injury, in this the most important crisis of his life, the memory of this equally wild man BUCKINGHAM occurs to me, his thoughtless jest seeming to be of more importance to him than his vast estate. Another of those eccentric individuals was the late Lord MORNINGTON, the handsomest man I ever saw, and one whose appearance was calculated to fascinate almost everyone. An account of him is to be found in RUSSELL'S Equity Reports; and, after hearing what he did, I think you will agree that ROGER TICHBORNE might have done anything.* For it is related of him that not only did he swear and use obscene language in the presence of his children, but encouraged his son and even his daughter to learn and repeat the most indecent words and the most vulgar oaths. "A man and his children," he said, "ought to go to the devil in their own way if they pleased." And again he says: "Neither God nor the devil will interpose between me and my children." He even went the length of declaring his intention to let his children associate with children of low habits, and to encourage them to adopt the manners and language of the lower classes, in order to obtain a knowledge of the world; and said that in Paris he used to get low children to come to his back door and teach his children low, vulgar, and profane talk. If the Defendant here had done anything of this kind, what would Mr. HAWKINS not have said? Young men are in the habit of doing eccentric things merely to be looked upon as something wonderful and get talked about, and I no more believe that Lord MORNINGTON seriously meant what he said than I believe the Defendant thought and reflected on the absurd answers he gave in the Court of Common Pleas.

The LORD CHIEF JUSTICE: Is your contention that, when a person who has manifested some eccentricity comes into a Court of Justice and gives a statement of facts on oath, he is not to be bound by the ordinary rules?

Dr. KENEALY: No, my lord, I don't say that he is not so bound. He is so bound; but I say we ought not to judge him as we should judge others.

The LORD CHIEF JUSTICE: If CAREW had come into a Court of Justice, and perjured himself, you would have said, "Oh, because he is the King of the Gipsies therefore his answers are not to be judged by the ordinary standard"!!

Dr. KENEALY: It would depend upon the evidence that he offered. I make no such contention as your lordship fancies. In any ordinary case in which CAREW'S feelings or prejudices were not morbid, he would doubtless give truthful evidence; but if he were called upon to give evidence in which his tribe were concerned, I say that the peculiar formation of his mind would colour all the views he would take of the transaction, and so blind him to the consequences of what he was saying that his evidence should not be judged by the same light as evidence in cases where his feelings were not concerned. And I say, Gentlemen, that this man's conduct comes under consideration, and should be viewed from a similar standpoint, and that we ought to excuse or palliate the hundreds of wild or wicked things of which he has been guilty.

The LORD CHIEF JUSTICE: But take things which are neither wild nor wicked—such as his education in Paris and at Stonyhurst, or his career in the Army. Assume his eccentricity, if you will, in respect of his life in Australia; what connection is there between that life and the evidence he has given with respect to what had occurred before he left England?

Dr. KENEALY: I am sorry that I did not make myself thoroughly understood. When I was commenting on the Paris life of the Defendant, I said that everything connected therewith came before him in a clouded and unpleasant aspect. He was not allowed by his Mother to have any human being as a playmate.

The LORD CHIEF JUSTICE: I beg your pardon. All she prohibited was his making acquaintance with any chance playfellows he met at the gardens of the Tuileries.

Dr. KENEALY: The evidence of CHATILLON showed that his Mother allowed him no boy companions.

The LORD CHIEF JUSTICE: He had his cousins, who were constantly associated with him.

Dr. KENEALY: Does your lordship mean the DE BRIMONTS?

The LORD CHIEF JUSTICE: No; the NANGLES.

Dr. KENEALY: I don't want to refer to any of the unpleasant matters connected with the NANGLES. What I say, Gentlemen, is, that he went about in the custody of CHATILLON like a Spanish lady attended by her duenna. He could not look back on his life at Paris with any pleasure; and the same remark applies to his stay at Stonyhurst, where his life was that of a beast; smoking, drinking, snuffing and the like. When anything is invested with painful reflections we try to banish it from our recollection.

The LORD CHIEF JUSTICE: But we do not succeed.

Dr. KENEALY: My lord, a great philosopher of old thought differently. CICERO says: "*Est situm in nobis, ut et adversa quasi perpetua oblivione, obruamus, et secunda, jucunde, et suaviter meminerimus.*"—It is in our power to bury as it were in a perpetual

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*The following are the Notes (in 2, RUSSELL, 9, *Wellesley* v. *Duke of Beaufort*) to which the Counsel referred.

"The general tenor of his life and conversation was described as loose and profligate; and it was alleged that not only was he in the habit of swearing and of using obscene language in the presence of his children, but that he encouraged them in such immorality, and caused even the girl to learn to repeat indecent words and the most vulgar oaths.

"Mr WELLESLEY (says Lord ELDON) states what I would represent as being, perhaps, his notion of law, namely, 'that a man and his children ought to go to the devil in their own way, if he please,' adding, in a postscript, 'that neither God nor the devil shall interpose between him and his children.' Dr. SOUTHCOTE in his affidavit swore, 'that among various topics of conversation which took place between this deponent and Mr. WELLESLEY, a common and general one was upon the subject of his (Mr. WELLESLEY'S) male children; and in the course of conversation, Mr. WELLESLEY often expressly declared his determination to let them associate with company, or with children of the lowest classes of society, and of the most depraved habits; and also that it was his particular wish and desire that his children should adopt the manners and language of the lower classes, in order that they might obtain a knowledge of the world; and upon many occasions W. L. WELLESLEY has made it a boast to deponent, that he, while residing in Paris, had frequently procured children of the lowest description to come to the back of his house to teach his children to learn and repeat the oaths and blasphemous language made use of by such vagabonds and others of the lowest order: and that in return for the oaths so taught to, and learned and repeated by, the infant Plaintiffs in the French language, he made his boys teach those low children to swear in English. Mr. WELLESLEY repeatedly observed that it was his wish that his boys should associate with persons of the lowest description to give them a thorough knowledge of low society; and that if *he* had the government of his children, he would take care that they should be present at all the bull-baits, cock-fights, dog-fights and all other sports of the like nature, in order to afford them opportunities of hearing and learning to repeat oaths and blasphemous language made use of by people usually attending such spots, which were manly sports, and ought to be pursued by his children in preference to any other . . . . . Mr. WELLESLEY repeatedly stated that he considered it the principal branch of his children's education that they should know how, if necessary, to make themselves perfect blackguards; it being his wish that they should be qualified to enter into and associate with the lowest and most vulgar society without the persons with whom they should associate being able to discern that they were the children of a gentleman, or gentlemen themselves.

"In a letter, he says: 'I have nothing to do with your mystic rites. With Mr. PITMAN (his tutor) they are too sacred. Study hard; but as soon as you have completed you tasks, go out in all weathers, and play hell-and-tommy; make as much riot as your tongues can admit; chase cats, dogs, and women, old and young, but spare my game.' Doctor BULKELEY says that Mr. WELLESLEY said in the presence of his children, 'debauch all women you meet with, young and old'" (p. 39).

oblivion all traces of our adversities, and to retain a pleasant and delightful memory of our successes. Cic.—*De Finibus*, i. 17.

The Lord Chief Justice: That I think a most untenable statement, but even supposing his life to have been as unpleasant as you say, are we not to take what he has stated on oath as binding?

Dr. Kenealy: My notion is that when a man has led a life of that kind it clouds his judgment.

The Lord Chief Justice: His judgment certainly; but we are dealing with matters of fact. It is not a matter of judgment, but a fact, that I sit here, and so it is that I dined yesterday and slept last night.

Dr. Kenealy: But suppose, after dining, I were taken off to the police-office on a false charge of picking a pocket, is that a circumstance that I would like to remember?

The Lord Chief Justice: You might try to forget it, but I defy you. (Laughter.) The very fact that made the occasion one of painful recollection is that which will impress it on your mind.

Dr. Kenealy: Yet an ordinary man would probably say, "Oh, I forget all about that."

The Lord Chief Justice: He would tell an untruth.

Dr. Kenealy: Well, that is the only explanation I can give in regard to those portions of his life.

The Lord Chief Justice: It is *your* explanation.*

Dr. Kenealy: Well, my lord, I contend that the Defendant passed a most unpleasant time at Stonyhurst and in the army.

The Lord Chief Justice: On the contrary, he seems to have passed a very pleasant time there; and he admits that the bullying he received did him good.

Dr. Kenealy: My lord, Mrs. Judith Woodman states that she saw him standing in front of the hotel with tears running down his cheeks. That does not appear much like happiness.

Mr. Justice Lush: Mrs. Woodman, I think, was one of the recent Witnesses?

THE WOLVES.*

Dr. Kenealy: Yes, my lord. Men do not resort to intoxication unless to drown misery, and I submit that it was his unhappiness that drove Roger Tichborne to drink.

Mr. Justice Lush: The whole of your argument is based on the assumption that he is Roger Tichborne, whereas that is what we are trying.

Dr. Kenealy: Surely I cannot be expected to assume that he is Orton, and base arguments on that. I am as much entitled to assume he is Roger Tichborne as the Prosecution are to assume he is Arthur Orton.

Mr. Justice Lush: But the substance of your argument seems to be that we are to believe him when he says that he is Roger Tichborne, and to reject all his other evidence.

Dr. Kenealy: Gentlemen, there is another remarkable account

* Dr. Kenealy has now in his possession a most vivid sketch, drawn by the Defendant, of Three Wolves; galloping along in full career, and evidently in pursuit; with blood-red tongues, and glaring eyes. These symbolized the Three Judges: and would do credit to the cleverest artist. It was this Sketch which suggested to Dr. Kenealy, the image contained in his Summing-up, *ante* page 207.

* It has been surmised that the Lord Chief Justice understood as affecting himself personally the persistency with which Dr. Kenealy maintained that by doing all we can to shut out bitter recollections we eventually succeed, if not in totally obliterating them from memory, in at all events weakening their force. The Lord Chief Justice has *one* memory which it is said he never can efface; hence his persistent denial of Dr. Kenealy's view. The latter, however, was not aware of the Bristol incident at the time of the Trial: he did not learn it till about a year after. He consequently could not have referred to it, though the Chief Justice thought he did. In *his* case, perhaps, he finds it impossible to expel the Phantom of Death that haunts him. Dr. Kenealy has seen his face when it imaged all the miseries of the damned

of a wandering life given by Mr. Trelawney in the "Adventures of a Younger Son" which is believed to be a record of his own life; and what is there related supports the theory that Roger Tichborne, disgusted with the life he was leading in England, fled from it, as Christian fled from Vanity Fair. South America is not a country where the ordinary tribe of young Englishmen travel. I don't believe there is a place where an English gentleman is not to be found; but still as a rule, they don't choose a country so wild as South America was then. If any of you happen to have read a book on Central America, written by Mr. Dunlop, you will be perfectly astounded with the description he gives of life there, and what he says of it is true of the greater part of the South American Continent; or, at all events, was so at the time of which I am speaking. If they had called his French servant we might have learned much. Let us assume this man's story is true, and I don't think it is at all incredible that, desiring a thorough change of life, he should first have gone to America, then set sail in the 'Osprey,' and finally plunged into the wild life of the Australian bush. It has been no part of my duty to interrogate the Defendant as to how he passed his time there. Therefore I am to some extent on a sea of speculation. But suppose him to have been engaged in scenes to which he was voluntarily no party; suppose some of the persons he met out there did something that might be considered a grievous violation of the law; suppose such a thing occurred to him as did to Gil Blas, as when he was involuntarily a spectator of the despoilment of the Marchioness—this is all mere speculation, but suppose it, and you will have an additional reason for his not writing home to his friends.

The Lord Chief Justice: Do you apply that to the time that he was at Boisdale, or at Dargo, or afterwards? If he had at once plunged into bushranging I can understand the argument, but he addressed himself for three years and four months to the ordinary and peaceable occupation of a herdsman.

Dr. Kenealy: I can hardly give a categorical answer to your lordship's question. If he was leading a quiet methodical life he was not mixed up with wild adventures, though I do not know why that should prevent him from joining in a wild adventure if opportunity offered.

The Lord Chief Justice: Then he would not have had the wages he earned.

Dr. Kenealy: I guarded myself by saying that he might have been involuntarily mixed up with unlawful acts.

The Lord Chief Justice: Yes; but when the stork got amongst the cranes, it was said to her, "You have no business here, and you must have your neck wrung."

Dr. Kenealy: I do not say thatit was so, but it is easy to imagine a number of young men saying, "We will go here and we will go there in quest of wild adventures," and that a man who innocently joined them should suddenly find himself in company with characters of a dangerous nature. I really do not know how it was; but I see nothing unreasonable in that suggestion. Another question has been asked, "If he was tired of his life in Australia, why did he not draw a cheque on Glyn and leave it?" Really such a question answers itself. For a man in the Defendant's position it would be absurd to talk about cheques on Glyn's when there would have to be some previous correspondence which would take some months. Mr. Hawkins says he was in poverty the whole time, but I am not sure but a man like him would prefer the free life he was leading in Australia, even coupled with poverty, to the wretched existence he had been passing at home. The fact that he was the heir to a baronetcy must not be taken as a proof that he was happy. The most melancholy faces I see are those of the rich I notice driving in their carriages in Hyde Park. (Laughter.) I notice my remark causes a laugh, but I say it is rather the exception to see a bright or gladsome face. Another circumstance that must be taken into consideration in asking ourselves why he did not write home, is the remorse that would follow his seduction of his cousin, and the fact that Lady Doughty's letters are susceptible of the interpretation that she knew what had taken place. Although I have been warned against such a presumption, yet I will present to you this point of view that the Defendant is Roger Tichborne, and that it is not until I have entirely failed to prove that he is not Roger Tichborne that you are entitled to regard him as Arthur Orton. Therefore my rock of safety in this Case is a reliance upon your sense of equity that will look upon him as Roger Tichborne until he is proved to be Arthur Orton. Remember that in a Criminal Court the presumption of innocence is with the Defendant.

Mr. Justice Lush: My objection was against your assuming either one or the other. The question is, Who does the evidence prove him to be?

The Lord Chief Justice: Quite so.

Mr. Justice Lush: It seems to me that you begin at the wrong end. You should show from the evidence that he is Roger Tichborne, and not assume.

Mr. Justice Mellor: It is correct to this extent, to assume that he is Roger Tichborne till it is shown that there is some positive inconsistency in that presumption.

The Lord Chief Justice: Your proposition, Dr. Kenealy, requires a little modification. You have a right to assume that the Defendant is Roger Tichborne till the contrary is proved; but it is quite a different matter to say that you have a right to assume he is Roger Tichborne till he is proved to be Arthur Orton. The Prosecution may wholly fail in showing that he is Arthur Orton, and yet may prove that he is not Roger Tichborne.

Dr. Kenealy: That I consider a great point gained, because I fear that some of you might have thought you were to presume nothing, but were only to seek to glean from the evidence how the truth lay. This case is altogether different from the Civil suit, in which, indeed, the Jury are to presume nothing.

The Lord Chief Justice: I beg your pardon. In an action of ejectment there is a presumption in favour of the party in possession.

Dr. Kenealy: Quite so; but an action of ejectment is like no other Civil case.

The Lord Chief Justice: You begin by assuming that the Defendant has spoken the truth; but as soon as a *prima facie* Case is made out on the other side it is for you to answer it, and then the whole matter is for the Jury.

Gentlemen, Gibbes has produced some letters from the Defendant which indicate considerable poverty, and they are given in evidence in order that you may be asked how incredible it is that a man of wealth and station, like Roger Tichborne, who had only to write a letter home to be rich in pocket, could voluntarily abide in such a condition. Permit me here to read to you an abstract of Lord Aberdeen's case, and when I have done that, I only solicit you to put the same question as regards *him* which you are told you should put as regards Tichborne. I read it from a London newspaper of 4th of May, 1872.

"THE GORDON PEERAGE.

"Yesterday the House of Lords, sitting as a Committee for Privileges, resumed the hearing of the claim presented by the Right Hon. John Campbell, Earl of Aberdeen, in the Peerage of Scotland, for a writ of summons to Parliament as Viscount Gordon of Aberdeen, in the Peerage of the United Kingdom. The case of the Claimant was opened on the 27th of March by Sir Roundell Palmer. The Attorney-General represented the Crown. Lord Redesdale was again in the chair; the other lords present were the Lord Chancellor, Lord Chelmsford, and Lord O'Hagan.

"At a previous meeting Sir Roundell Palmer, as leading counsel for the petition, stated the case, commencing with a recapitulation of the history of the family, and then continuing:—He should be able to satisfy their lordships, by the proofs he should adduce in support of the claim, that the sixth Earl of Aberdeen died at sea, without having been married, on the 27th of January, 1870, and in the event of their lordships being of opinion that this point had been sufficiently established, the right of the present Claimant to succeed to the viscounty would be clear and indisputable. After the facts which he should have to detail to their lordships had been ascertained, the present petitioner took the proper proceedings in Scotland to have himself served as heir to the estates belonging to the family; and eventually on the 3rd of July, 1871, after having laid before the proper tribunal in the country a great body of proofs, a great and important part of which consisted of evidence taken abroad before a commission duly authorised by the sheriff to receive it, an interlocutor was pronounced, declaring that the petitioner had proved the facts stated in his petition, and he was accordingly served as heir special to the family estates of which he was now in legal possession. The petitioner then sought to be summoned

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in the Inferno. The following allusion to this affair was published in the *Englishman*.

COCKBURN AT BRISTOL.

What must have been the thoughts of this Man when, after twenty years' absence, he revisited Bristol,—where passed a scene that is before him in blood, day by day, night by night, hour by hour, until he drowns his conscience deep in brandy? However, all went well to the outer eye. The Bumbledom of the City fell before him; the Bumbledom of the Bar knelt down; the Bumbledom of the Law Society went on its face and ate dirt. Every one among them knew that he gazed upon an Assassin. But what then? Is not murder right if it be arrayed in purple and fine linen; and if it flaunts in gold? And are not Swindling and Card-cheating, virtues, when they are successful? We hear that the parson who preached the Assize Sermon, read, with peculiar emphasis, the following, with a a slight addition, from one of the oldest of books.

A VISION.

1. In thoughts from the Visions of the Night, when deep sleep falleth on man.

2. When the memory of former crimes awakens within his soul, and Spectres rise to drag him downwards.

3. Fear came upon him, and trembling, which made all his bones to shake.

4. Then a Spirit passed before his face; the hair of his flesh stood up.

5. The image of a Woman, wan, and pale and full of terror: and from her heart the red blood oozed.

6. And over her was the shadow of a knife.

7. And she stood still—but who can describe the form thereof?

8. An image was before his eyes; there was silence: and he trembled, and was sore.

9. And he heard a Voice.

to their lordships' house, and her Majesty having referred the claim to the Attorney-General, the matter had come before their lordships for decision. As he had before stated, the sole question in the Case was as to the death without issue of the late earl. Their lordships would find from the evidence that he was a young man of remarkable virtue and promise, exceedingly fond of maritime pursuits, accomplished in many ways, a first-rate shot with the rifle, fond of both instrumental and vocal music, in which he had attained some proficiency, accomplished in drawing and painting, generally well educated, remarkable for his physical endowments, pure in mind, attentive to his religious duties, regular and careful in his general conduct, and in every respect a most exemplary young man. He, however, did not regard himself as being constitutionally strong, and believed that a seafaring life would be of great advantage to him; and, moreover, he was of a singular and romantic turn of mind, desirous of seeing the world. Under these circumstances, in spite of his rank and station, he thought fit to indulge his love for a sea life and of adventure, and adopted a course which at first sight might appear unusual and extraordinary. He went abroad in the year 1866, sailing from Liverpool about the end of January in that year, and he never afterwards returned to this country. He went in the first instance to New Brunswick, of which his uncle, now Sir A. GORDON, was then governor, where he appears to have stayed for some time, and then to have gone to the United States. It was in May, 1866, while staying at Boston, accompanied by two English gentlemen, that he last used his real name, with the exception of one occasion in February, 1867, when he drew two cheques for £100 each, at New York, upon his banker in Scotland. Singular as it might appear, having regard to his large fortune and other worldly advantages, after the latter date he never drew upon the funds in Great Britain, *preferring to live on his own wages on a perfect equality with those with whom he was associated in his seafaring life; and, indeed, in his letters to his mother it would appear that he was almost ashamed of having so far yielded to the pressure of the moment as to have drawn the two cheques to which he had referred.* The young man qualified himself for a maritime life by going through the course of instruction and passing the regular examination in the United States. He took regular service in small ships belonging to American owners, first as mate and then as captain. In the course of his voyages he gained considerable maritime experience, and formed friendships with persons engaged in the same pursuits, but he always maintained the same character as being a man evidently calculated by his intelligence and education to occupy a different sphere from that in which he chose to appear, while he everywhere preserved the propriety of his conduct and the purity of his morals. He passed as G. H. OSBORNE, a name which he appeared to have assumed as early as the 22nd May, 1866, and by which he was known to all persons with whom he came into contact. He kept up a correspondence with his mother, who was residing in this country from the time of his departure until 1869, since when all communications with him had ceased. By comparing the history of OSBORNE with that detailed by the Earl of ABERDEEN in his letters to his mother, it would be conclusively shown that they were those of the same person, although throughout his correspoodence he carefully abstained from indicating either the name of the ship to which he belonged or the name he had himself assumed.

"Lord CHELMSFORD inquired whether there was anything in connection with his family that would make it likely that the young man would have assumed the name of OSBORNE.

"Sir R. PALMER replied in the negative. The correspondence not being continued, the family became alarmed, and his mother requested a Mr. ALEXANDER, who had been chaplain and tutor in the family since the year 1861, to go to America, in order to follow up his traces if it were possible to do so. It was not until Mr. ALEXANDER had been in New York for six months that he obtained the clue that enabled him to trace the history of the unfortunate earl, and to ascertain the manner of his death. He discovered that the young man had sailed from Boston to Melbourne in a small sloop called the 'Hera,' on the 21st January, 1870, and that the fatal accident by which the earl's family and the country were deprived of a very valuable life occurred on the 27th of that month, when he was washed overboard by a wave which struck the ship. This unfortunate fact having been brought to light, Mr. ALEXANDER communicated with the captain of the 'Hera,' and in accordance with his request the latter sent him a number of articles belonging to OSBORNE, which would be proved conclusively to have formed a part of the property of the late earl, and which would be produced before their lordships as part of the evidence of identity. The identity of the late earl would be proved by three classes of evidence. In the first place, Witnesses would be called who would identify known photographs of the Earl of ABERDEEN, as those of GEORGE OSBORNE, and *vice versa;* secondly, handwriting known to be that of GEORGE OSBORNE would be identified as that of the late earl; and thirdly, the history of the late earl, as contained in his letters to his mother, would be shown to be that of GEORGE OSBORNE.

"The learned Counsel said he should offer as proof on the latter point the evidence which had been taken in America by the Commissioners appointed by the Sheriff.

"On the evidence taken by the commission being tendered, Lord CHELMSFORD informed the Attorney-General that their lordships would admit the evidence *de bene esse*, and would give him time to consider his opinion as to its admissibility. The evidence was then received.

"The following is an extract from the evidence of FRANK PRATT, a seaman on board the 'Hera' at the time of the accident to the earl:—

"'One morning, certainly not more than a week after we sailed, the first mate, OSBORNE, was lost overboard: I can't tell you the exact day, but it was after the weather began to moderate. The sea was still running high. It was about four o'clock in the morning. He had just come on deck. It was the time for changing the watch; from twelve to four was the second mate's watch, from four to eight was OSBORNE'S. I was in the second mate's watch, but we had not gone below when the accident happened. We set about lowering the mainsail. OSBORNE was hauling at the down haul of the mainsail. I was within six or eight yards of him. I heard the cry, 'Man overboard'; it was not very dark then. I am pretty sure there was a nice moon. I knew at once it was OSBORNE. He was taller than the rest of us, and dressed differently at the time. He had on a long heavy overcoat. I did not see what threw him over. He could not have been struck by the gaff, because it was only half down. My impression is that his foot must have got inside the slack of the rope, and that when the ship gave a heavy roll, the rope would get taut and throw him overboard. The rope was fast at the other end, and did not fall into the sea. All of us who were on deck at the time did what we could to help him at once. All but the Captain and the Steward were there. Some of us threw out ropes. I got a plank and heaved it over the stern. It was heavy, and the second mate helped me. I heard OSBORNE call out repeatedly. I can't tell what he said. He was just calling for help. The Captain was below when the thing happened; but he soon came up. The boat was not lowered. It was a heavy one, and we were not many of a crew; and before it could have been lowered OSBORNE had ceased to cry. I think I heard his last cry. I can't say how long this would be after he fell overboard. Time passes without your noticing it on these occasions. I was three years a soldier in the American war, and I have heard many men give their last cry, and I thought I knew it when I heard it from OSBORNE. After the cry I mean we did not hear him again. The ship was moving but slowly through the water. I don't think it was the increasing distance that made us hear no more cries. I think he was drowned. Of course, if you put it as a possibility, I suppose it is a possibility that he may have been picked up, but I don't think he was. I am morally certain the man was lost. The 'Hera' lay to till daylight, and when daylight came we saw nothing of OSBORNE.'

"Some further documentary and verbal evidence having been given,

"The further hearing was adjourned *sine die*.

"The proceedings commenced yesterday with the examination of the Dowager Lady ABERDEEN. In answer to Sir R. PALMER, her ladyship said she was married to the last earl but one on the 5th of November, 1840, and had three sons, GEORGE, JAMES HENRY, and JOHN CAMPBELL, of whom the two elder had died both unmarried. The second son sailed from Liverpool at the end of January, 1866, and had never been seen by her ladyship since. The last letter she received from him was dated the 24th April, 1869. (The letters were then produced). All but one were still in the original envelopes. The photographs of the late earl were then put in, and having been proved by Mr. WATKINS, of Regent-street, who remembered having photographed the young earl when a member of the Scottish Eight, and identified the photographs produced as having been taken by himself, these and later photographs taken in America were then handed to her ladyship and identified by her as likenesses of her son, though the American photographs struck her as bad likenesses. The next evidence was that of handwriting, various entries in the log-books of the several vessels in which George OSBORNE served as mate being shown to the Witness and identified by her as in the handwriting of her son. Two cheques were then handed to the Witness, and the signature (which was in his own name) was in both cases recognised by her as in the handwriting of her son. Her ladyship also recognised a song which was brought from America by Mr. ALEXANDER as having been a favourite song of her son's, and as being copied in his handwriting. Two toothbrushes were then handed to the Witness, who positively asserted that the names of the tradesmen impressed upon them were both names of tradesmen with whom her son was in the habit of dealing—one of Aberdeen, the other of Edinburgh. Asked about her son's height and personal appearance, she said that when he left this country he was six feet one inch and a half, and wrote to tell her that he had grown half an inch. He was very fair, was always very athletic, fond of adventure, and in particular of the sea, as was evinced by a cruise to the French coast in a skiff with his brother.

"This evidence having been given, her ladyship retired, and Sir R. PALMER then applied to their lordships for their final judgment as to the admissibility of the evidence taken before the American Commission, and argued that it ought to be received, because, as the parties were not within the jurisdiction of the house, and could not therefore be compelled to attend, the rejection of the evidence would involve the necessity of a fresh commission.

"The ATTORNEY-GENERAL opposed the admission of the evi-

dence, on the ground that their lordships were asked to receive evidence in a peerage claim taken for another purpose.

"The LORD-CHANCELLOR, Lord CHELMSFORD, and Lord COLONSAY went at great length into the arguments urged at the Bar, but were unanimously of opinion that the rejection of this evidence would be a denial of justice.

"Further evidence having been given, their lordships decided *nem. con.* that the claim was made out."

[The Court rose at 4 o'clock.]

ONE HUNDRED AND FORTY-THIRD DAY.—WEDNESDAY, DECEMBER 17TH, 1873.

Dr. KENEALY resumed his address to the Jury on behalf of the Defendant. He said: May it please your lordship, Gentlemen of the Jury—I continue my remarks upon the spirit of this Prosecution, because I think it is right that in a Case of this kind you should see clearly whether the principles on which the Prosecution is conducted are praiseworthy in all respects. To me it seems to be founded on the old principle that the longest purse wins—a principle which, unfortunately, has been carried into legal proceedings before now to the great detriment of truth and justice. It is more particularly oppressive to a man in the position of the Defendant—that principle of the longest purse wins.

Mr. TAYLOR (Juror): The longest wind.*

Dr. KENEALY: The Defendant has had great difficulty in obtaining funds. He has had to rely on the old petition, *Date obolum Belisario*, and so to say, to subsist on the chance charity of persons who like to see fair play. We had to undertake his Defence under circumstances fraught with a thousand difficulties. We did not know from day to day what his resources would be, or whether he would have means to bring up his Witnesses. You can imagine how disheartened he must have been by the mere fact that he was living upon chance charity—how depressed by the melancholy reflection that whatever his labours in the collection of evidence might be they might be entirely frustrated by the want of funds. You can easily realize the immense difficulty in which he was placed when having to face a Prosecution with unlimited funds at their back. He had also a great deal of prejudice to contend against, produced by broadsides, caricatures, and newspapers. And although you are all too just I hope, and too impartial to allow yourselves to be prejudiced by them, yet others may be prejudiced with whom you come in contact, and whose views may involuntarily influence your minds. With those advantages the Prosecution has been as vigilant—I might add, as virulent—as though they had no advantages at all. Even the Witnesses were ordered, on their application, to remain out of Court. We paid little attention to that order for a time, but directly the Defence commenced the utmost vigilance was exercised by the Prosecution to keep out our Witnesses. As I have already said, the Defendant's own follies have heightened the prejudice against him. Instead of keeping to one firm of Attorneys, he seems capriciously to have changed Attorney after Attorney—a fact you will bear in mind when you compare the completeness of everything connected with the Prosecution and the incompleteness of everything connected with the Defence. That must be reckoned amongst the other follies, or perhaps necessities,† committed by the Defendant, and he sits here to-day to answer for his rashness. I will not follow the example set me by the Prosecution in distinctly charging plot and conspiracy against anyone in this Case. It is no part of my duty to charge the existence of a Popish plot or a Family plot. Different opinions are entertained upon the subject by different people. I have suggested some reasons for that belief; I shall not trouble you with others; but it is worthy of observation that the first course of proceeding adopted by the Family is remarkably analogous to the course of proceeding adopted in the case of the Bill of Pains and Penalties against Queen CAROLINE. No one doubts now that the whole or the greater portion of that Bill was founded on evidence that was fraudulent and false. Evidence was procured under what was called the Milan Commission, exactly in the same way as a great portion of the evidence in this Case was founded. Long before the Bill was presented to Parliament, the Milan Commission was issued, and Lord BROUGHAM, in his introduction to the Defence, speaks of the Milan Commission—which to a great degree resembles the Australian and Chilian Commissions—thus:

"The Milan Commission proceeded under this superintendence, and as its labours, so were their fruits exactly what might have been expected. It is the first impression always arising from any work undertaken by English hands, and paid for by English money, that an inexhaustible fund is employed, and with boundless profusion—and a thirst of gold is straightway excited which no extravagance of liberality can slake. The knowledge that a Board was sitting to collect evidence against the QUEEN immediately gave such testimony a high value in the market of Italian perjury; and happy was the individual who had ever been in her house, or admitted to her presence—his fortune was counted to be made."

It must strike you, Gentlemen, as a singular fact, that while we have undoubtedly proved to you that an 'Osprey' was in Melbourne in 1854, no person who was on board that vessel was called by the Crown to prove that ROGER TICHBORNE was not saved. Mr. HAWKINS may ask me why I did not call some 'Osprey' man to prove that TICHBORNE was saved? I say to him, "The 'Osprey' was there. She must have come from somewhere, although, with our limited resources, we have been unable to trace her. You have unlimited resources. I have given good and conclusive reasons for believing that the 'Osprey' passed over those seas where the 'Bella' was wrecked. Why do you not produce some one to show that ROGER TICHBORNE was not saved?" If, Gentlemen, their enquiry was one after truth and justice, why have they not traced that ship, and given us some account of the events of her voyage? Is there anything unreasonable in that? So far from doing so, they have not even discovered—as we did—the existence of the ship. Either they did not enquire, or their enquiry was fruitless.

The LORD CHIEF JUSTICE: I understand that they made examination at the Custom House, and found no entry of any such ship.

Dr. KENEALY: Yes, my lord, they say so; but I say, in answer to that, that no one can now doubt there was such a ship in Hobson's Bay.

The LORD CHIEF JUSTICE: But how were they to trace a ship of which they could find no entry whatever? They went to the proper and legitimate source.

Dr. KENEALY: They could have adopted the same means that we did, and simply enquired elsewhere.

The LORD CHIEF JUSTICE: I take it for granted that these Witnesses happened to be in England, and that they communicated with you. If you had sent out for information, I take it your search would have been fruitless.

Dr. KENEALY: Your lordship is quite right in the guess. These Witnesses gave information. I cannot but think that if the Prosecution had advertised in the 'Times' for an 'Osprey' at Melbourne in 1854, they would have received confirmatory evidence one way or the other.

A JUROR: The builder of a Bristol 'Osprey' proved that that vessel was at Melbourne in 1854.

Dr. KENEALY: Yes; but the 'Osprey' to which the Defendant's evidence and the evidence I called was directed was a foreign vessel. The Lord Chief Justice reminded me yesterday that the Defendant was three months on board the vessel, and only two months delirious; but it should be remembered that after partial recovery he would remain for some time under the influence of the previous disease. It takes a considerable time to completely recover from long lasting delirium. What I say is, that the same facilities were open to them to discover the 'Osprey' as to us. If they had discovered it, they might have produced some person who had been on board who could throw light on the Case. But the evidence is not only of an 'Osprey,' but of an 'Osprey' having been there with a shipwrecked crew. You will not doubt that fact after the evidence I have given by unimpeachable Witnesses on the subject. I hope that observation, Gentlemen, will produce some fruit in your mind. Gentlemen, I alluded yesterday to what seemed to me to be rather a hasty exercise of jurisdiction on the part of the late Lord Chief Justice BOVILL. It would have been better, I think, having committed the Defendant, to have directed the Law Officers of the Crown to prosecute Mrs. PITTENDREIGH for forgery and perjury.

The LORD CHIEF JUSTICE: She was not a Witness.

Dr. KENEALY: I do not say the offence was committed in the face of the Court.

The LORD CHIEF JUSTICE: Did she make an affidavit?

Dr. KENEALY: The forged letters are exhibits attached to an affidavit.

Mr. Justice LUSH: I think not.

Mr. HAWKINS: She certainly made no affidavit in this Case.

Dr. KENEALY: Nobody said she did.

Mr. HAWKINS: In the former Cause she made no affidavit.

Dr. KENEALY: I think Mr. DAVIS has the affidavit to which I refer. It is, I say, unfortunate that she late Lord Chief Justice did not suggest that she should be prosecuted as well as the Defendant. I have been twitted with not calling Mr. BAIGENT. Why did not Mr. HAWKINS call Mrs. PITTENDREIGH? Would you not like to have known from her, in the interests of truth and justice, the history of these Documents? Is there one gentleman among you who would not have felt it desirable to have the history of these papers in connection with their passage through the hands of the Managing Clerk of the Attorneys?

The LORD CHIEF JUSTICE: No. This woman was the wife of a Copying Clerk.

* The reader will note how this insolent observation addressed to Counsel passed without observation or rebuke from the Bench. The Juror only followed the example shown him by the Judge.

† We have the most complete conviction in our minds, that *all* the Solicitors engaged by the Defendant, with one exception, sold him and his interests to the Crown: or to the Family.

Mr. Justice MELLOR: There is no issue upon the indictment upon which Mrs. PITTENDREIGH could have been a Witness.

Dr. KENEALY: I use it in this way that these Documents throw a cloud upon the Case, in which the authority of the Crown has been involved.

Mr. Justice MELLOR: The Crown is not a despotism. A Sovereign must be bound by the rules of law.

Dr. KENEALY: There is no rule of law that would have prevented Mr. HAWKINS putting Mrs. PITTENDREIGH in the box and, saying "I have no question to ask," have left her for cross-examination.

The LORD CHIEF JUSTICE: What a farce that would have been!

Mr. Justice LUSH: And a waste of time.

Dr. KENEALY: I do not know how that would have been a farce.

The LORD CHIEF JUSTICE: Yes, for the Counsel for the Prosecution to call a Witness of whom he had no questions to ask.

Dr. KENEALY: He should have done it to give me an opportunity of cross-examining her—of eliciting—if I could—the true history of these Forgeries.

The LORD CHIEF JUSTICE: It is never done.

Dr. KENEALY: It is done in cases of libel.

The LORD CHIEF JUSTICE: I have never seen it done. I have seen a man put into the box and asked questions. To put a man up for the sake of knocking him down is what I do not understand.

Mr. TAYLOR (Juryman): It is merely a repetition of what Dr. KENEALY said the other day.

The LORD CHIEF JUSTICE: Harping on the same string. What would be the effect upon the issue?

Dr. KENEALY: To weaken the effect of the committal by the Judge.

The LORD CHIEF JUSTICE: The Jury have told you it would have no influence on their minds.

LORD BROUGHAM.

The FOREMAN: It is quite useless for us to express an opinion, because Dr. KENEALY will not take it.

Dr. KENEALY: I am sure you will express no opinion, Gentlemen, on this Case till it is over. You may hereafter differ from your present view. Fresh lights are constantly presented, and you may come round to an opinion which you do not now entertain. I shall be compelled to present arguments again and again, however adverse you may be.

The FOREMAN: We shall never tire of hearing any arguments on material points.

Dr. KENEALY: I am sure of that, from the attention you have shown. There is another matter to which I wish to call your attention, and that is to two offers made by me—offers which would have tended materially to the discovery of truth, but offers which the Crown would not accept. The size of the Defendant's foot has from the beginning been a matter seriously in issue between us. If the Defendant was originally what is called a "splaw" footed man, he never could have the foot he has now. If he had possessed such a foot as ARTHUR ORTON has been proved to have had, he never could have been ROGER TICHBORNE. In support of that various lasts were produced, as well as his own boot; and it is singular that the persons who had measured the Defendant differed in accounts they gave of its size. Now I ask you, under these circumstances, whether the offer I made to have his foot measured in your presence ought not to have been accepted? Truth and justice are said to be at the bottom of this inquiry, and they could have no fear if their measurement was correct. I made to them an offer, which I submit they ought to have accepted. One of the crucial points in this Case was that there was a peculiarity of formation in ROGER TICHBORNE, and if there is evidence that the Defendant possesses the same peculiarity, it is almost decisive proof that the two men were identical. When I was going to have the Defendant examined by Dr. WILSON, a gentleman of undoubted standing and respectability, for the pur-

pose of testing the truth of the existence of that peculiarity at the present moment, the offer was not accepted, although Captain FRASER had said that such a peculiarity existed in ROGER TICHBORNE.

The LORD CHIEF JUSTICE: Captain FRASER *never said anything of the kind.*

Dr. KENEALY: Captain FRASER applied a nickname to him which implied it.

The LORD CHIEF JUSTICE: No. There was a name applied to him by some loose women whom he would not have in his room.

Dr. KENEALY: Captain FRASER distinctly said that he had that nickname in the regiment.

The LORD CHIEF JUSTICE: Oh, no.

Dr. KENEALY: Yes, my lord.

Mr. Justice MELLOR: There was nothing in point of fact to show that ROGER TICHBORNE had any peculiarity of the sort.

The LORD CHIEF JUSTICE: The persons who could have answered the question were never asked.

Dr. KENEALY: He was known in the regiment by a certain nickname.

The LORD CHIEF JUSTICE: That is not so.

Dr. KENEALY: Your lordship, I think, has forgotten the evidence upon that matter.

Mr. Justice LUSH: I find from my notes that Captain FRASER said he had never heard of it.

Dr. KENEALY: Oh, my lord! it is in print.

Mr. Justice LUSH: He says, "I knew nothing about it."

Dr. KENEALY: But he says, "The moment he came into my room he told me that such terms had been used." He was then asked, "Did you hear anything about a malformation?" and he said, "No; I ought to know almost every part of him." "Did you ever know him to go by a nickname?"—"Yes; Frenchy." "Anything else?"—"Not that I am aware of."

The LORD CHIEF JUSTICE: Then you handed up a paper with something written in pencil on it, and asked this question: "Was that one of the names?" The Witness replies, "The night he came to my room he told me that such a term had been used. I did not hear it."

Dr. KENEALY: Yes, my lord; that is the evidence.

The LORD CHIEF JUSTICE: And is that a nickname?

Dr. KENEALY: Certainly.

Mr. Justice MELLOR: But even if it were, is that, I should like to know, any proof of the physical fact?

The LORD CHIEF JUSTICE: All the evidence shows is that the words were used once, and that he was exceedingly indignant about it.

Dr. KENEALY: Does it not show that the fact was known in the regiment?

The LORD CHIEF JUSTICE: It is no evidence of the fact, or of its being known. It is evidence that a certain expression was once used.

Dr. KENEALY: I say, my lord, that it was a nickname in the regiment.

The LORD CHIEF JUSTICE: There is no such evidence. That a particular term was used once is no proof that it was a nickname. It was not known to any Officer in the regiment that you asked about it. They all negatived it.

Dr. KENEALY: My lord, TICHBORNE came straight to FRAZER from the mess, where it must have been used.

The LORD CHIEF JUSTICE: It is not because some young officer had chosen to make an impudent and indecent allusion that the fact is evidence of a nickname.

Dr. KENEALY: If it were uttered once it would stick.

The LORD CHIEF JUSTICE: If it were an issue to go to the Jury I would tell them that there was no evidence to support it.

Dr. KENEALY: It ought to be taken in connection with all the surrounding circumstances. We are to look at the fact in the light of what we know was the habit of those officers—namely, of putting persons of a certain class into his room for the purpose, as Major BOTT said, *of trying him.* What does that mean?

The LORD CHIEF JUSTICE: They may have chosen to have those persons in their rooms. He did not. They amused themselves by putting those persons into his room to try whether he would yield to their solicitations.

Dr. KENEALY: The word is capable of that interpretation, but I take it in connection with the name he was undoubtedly called at the mess; and I say therefore there are fair and reasonable grounds for calling it a nickname.

The LORD CHIEF JUSTICE: Then you ought to have asked the other Officers as to their knowledge of it, but you did not. There were eleven or twelve called, and you put no question to them on the subject. There is no evidence at present that there was a nickname.

Dr. KENEALY: I got it from Captain FRAZER, and that I thought was sufficient. I did not wish to pursue the subject, with all those women in the gallery.

Mr. Justice MELLOR: Even if you had evidence that there was such a nickname, I would tell the Jury, if I were charging them, that there was not a particle of evidence of the physical fact.

Dr. KENEALY: Yes; if it stood alone.

Mr. Justice MELLOR: But it does.

Dr. KENEALY: I have contended all along that there was a malformation, and alluded to the words in his letter as to the "withered leaf," and its Hebrew signification.

The LORD CHIEF JUSTICE: No; you have contended for a great deal more than malformation—you have contended for absolute incapacity.

Dr. KENEALY: Certainly not, I have said that when he was young, it was in his idea—in his mind.

The LORD CHIEF JUSTICE: The expression is found accidentally occurring in a letter, and it is taken with a certain significance which a great Hebrew scholar tells me it does not bear. And that is gravely put to the Jury as proof. Even if it did bear that interpretation, what did ROGER TICHBORNE know of Hebrew?

Dr. KENEALY: My lord, I think you give that Hebrew scholar more credit than he deserves. I hope your lordship will consult some real Hebrew scholar. (Laughter.)

The LORD CHIEF JUSTICE: I consulted the gentleman to whom I refer as a matter of curiosity. It has no more to do with the issue we are trying than what you might read out of an Hebrew book would have. (Great laughter from the Barristers' benches.)

Dr. KENEALY: I am not affected by this buffoonery—(alluding to the laughter in Court)—I am sorry gentlemen should convert this Court into a sort of Baron NICHOLSON'S Hall. I do not wish to be surrounded by a gang of laughers. I do not mean there (the Witness-box), but here, behind me. "Unmannered dogs; cease ye when *I* command." Gentlemen, I say—taking the tricks the Officers played on TICHBORNE, and the evidence of Major BOTT—that these women were brought in to try him——

Mr. HAWKINS: My lord, Major BOTT'S words are, "You used the word 'try,' but I deny it;" and again, he said, alluding to the same word, "I never said such a thing."

Dr. KENEALY: I cannot publicly read the evidence, but I wish you, Gentlemen, to read it at pages 60-65, Vol. II. Read it in connection with the evidence of Dr. WILSON, given in Vol. VI., pp. 327-329; and you will be convinced. I think it will lead you to the conclusion that these practical jokes were persistently played on TICHBORNE, and on him alone in the regiment, and played upon him in connection with what I call that nickname, but which the Lord Chief Justice says is not a nickname—in connection with what I will therefore call a name—that name which Captain FRAZER heard from the lips of TICHBORNE himself.

The LORD CHIEF JUSTICE: You asked the Witness whether such a name was known in the regiment, and he entirely denied it.

Dr. KENEALY: It was the reason why his Mother kept him in petticoats till he was twelve years old; and why she would not allow him to associate with other boys. She was not really certain whether he was male or female.

The LORD CHIEF JUSTICE: There is no evidence of this.

Dr. KENEALY: My lord, there is enough to justify my contention. And here, Gentlemen, permit me to remind you of a fact of the greatest weight. Evidence has been given of ARTHUR ORTON having been seen bathing. If he had possessed the remarkable peculiarity, or malformation described by Dr. WILSON, should we not have heard it from some one? When the undoubted TICHBORNE bathed with MANNOCK, he wore drawers; nobody can imagine that such a brute as ORTON, was troubled himself with such. But if he had the TICHBORNE malformation, he must necessarily have done so, or he would have been the butt of ridicule and laughter and jest to all who were with him. Besides, all the members of his family would have known that it existed: his brother CHARLES, his elder sisters. Do you not think that if ORTON had what Dr. WILSON described, the Crown would only have been too eager to prove such an unanswerable evidence of identity? It would have so utterly destroyed my Case, that I could not have held it in hand an hour after such proof had been established by Witnesses of veracity. Note, I pray you, the wonderful fact, that ROGER TICHBORNE, although a young man fond of out-door exercises and amusements, is proved to have only *once* bathed at Stonyhurst (I dismiss Mr. TALBOT as not worthy of credit), and then he actually kept on his drawers while bathing, and wore his trousers over his wet drawers afterwards; a thing utterly at variance with the ordinary practice, and which would not have happened unless for the cause I suggest—namely, to conceal the malformation that existed. I refer you to his evidence, Vol. I., page 324, where you will find this proved. Where is CHATILLON, who could have sworn that ROGER had no such peculiarity? Where indeed? Could they not have found a host connected with the Family, who could have given rebutting evidence on this vital point? And does it not explain satisfactorily to the world why his Mother kept the boy almost in female attire long, very long after the usual period when male dress is assumed?

You may be told, perhaps, that ROGER did not know Hebrew, and consequently that he could not have used the symbol of the "withered leaf." As if there were not plenty of students and philosophers at Stonyhurst, who could not have told him of this Eastern symbol. As if the aspirants after the priesthood in a Jesuit college did not know this; and as if in promiscuous conversation it could not have slipped out. Are young men destined for holy orders so straight-laced that they do not converse upon such matters? Is it absolutely *impossible* that ROGER may not have heard of it, or read of it somewhere? I notice such an argument to dismiss it with the scorn that it merits. And I

unhesitatingly add, that no man who has any knowledge of Hebrew will dispute the symbol.

I pass from this, on which I would have you pause long: and I earnestly entreat you to bear in mind the manner of Major BOTT during his cross-examination. You noticed even the twitch of Lady RADCLIFFE, which escaped the observation of the Lord Chief Justice; and I have no doubt you remember Major BOTT's manner, and I ask you to say that his evidence negatively supports the view I am putting before you.

Gentlemen, if you look back to the evidence, you will find it positively proved that ROGER had a malformation: it is proved here that the Defendant has a similar one.* Here is a powerful fact. Well, how do they meet it? First they seek to ignore it. To pooh-pooh it. Then they try to meet it with another. The Defendant and ORTON had St. Vitus's dance. TICHBORNE never had. *Ergo*, he is ORTON. Now what proof is there of this?

Gentlemen, you will be told that he said to GIBBES, he had suffered from a disease called St. Vitus's dance. A great point will be made of this: because there is considerable evidence that ORTON had that malady. Now the Defendant positively denies that he ever said so. Hear it.

"Did you not tell your Attorney, Mr. GIBBES's, that you had been afflicted with St. Vitus's dance from your childhood?—Certainly not.

"Will you swear you did not?—I will swear I don't remember.

"Have you looked at Mr. GIBBES' deposition taken by the Australian Commission?—I have not read it.

"Has it been read to you?—It has not.

"Will you swear you did not tell Mr. GIBBES that you had had St. Vitus's dance?—I have already sworn it.

"Then if he has said so it is an absolute falsehood?—It is.

"Can you account for his writing to Lady TICHBORNE to say you had told him you had had St. Vitus's dance?—No.

"Did you tell JOHN PERRIN that before you left England you had St. Vitus's dance?—Certainly not.

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*NOTES ON THE MALFORMATION.

There is now lying before the Editor of this *Trial*, the following Letter, in the handwriting of Dr. LIPSCOMBE:—

DR. LIPSCOMBE ON THE MALFORMATION.

Alresford, Feb. 15, 1869.

DEAR ONSLOW,—I only received your letter, and went to see Sir ROGER before he left to-day. He readily assented to an inspection, and for your information I beg to send you a report of what I noticed peculiar in his formation. *He told me that his Mother was aware of the peculiar features of his development; and satisfied herself by an examination, that the peculiarity he presented was also that of her son.* The penis and testicles are small; the former so much retracted (when not excited) that it rests upon the upper part of the scrotum, like a bud, about an inch and a half in height; and covered by a wrinkled and elongated prepuce: in fact the *glans penis* (which is very small) is almost the only part of the penis which is seen. I have never before seen anything like it in a man of his age. I also carefully looked at his face with a lens: and I have no hesitation in saying that the marks there are not like those left by small-pox: but are, I believe, the effects of Erysipelas and exposure to weather. I looked also again at his arms; and I cannot detect any sign which would indicate the obliteration of any marks. I hope you will be able to get some good man and true to work his Case for him—for that he is ROGER CHARLES TICHBORNE the more I see of him the more I am convinced.—Yours very sincerely,

J. K. LIPSCOMBE.

We do not value very much any statements made by the ORTON Family; but the following may have some weight with others.

STATEMENTS OF THE ORTON FAMILY.

Sept. 28, 1878.

SIR,—Mr. W. Q. EAST (ex-Sheriff of London), feeling that the evidence of the surviving members of the ORTON family, now residing in England, proving indisputably that their brother ARTHUR had NO malformation, would be of great importance for the liberation of the Claimant, and of the utmost service to him when he is released, has had the following statutory declarations taken. Mr. W. Q. EAST holds those most valuable documents (which are legally signed and attested) in his own possession, at his own residence, Queen's Hotel, St. Martin's-le-Grand, and has kindly consented that I should take a copy of them with a view to their being published.—Yours faithfully,

R. M. GURNELL.

DECLARATION OF MRS. TREDGETT.

I, MARY ANN TREDGETT, of Wood Green, in the County of Middlesex, widow, solemnly and sincerely declare as follows:—

"My brother ARTHUR ORTON had NO MALFORMATION of the genital organs whatever."

I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of his late Majesty King WILLIAM the Fourth, intituled an Act to repeal an Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.

Declared at No. 28, Queen-street, Cheapside, in the City of London, this twenty-first day of February, 1878. [Signed]
Before me—HERBERT C. LADBURY, A Commissioner to administer Oaths in the Supreme Court of Judicature in England. MARY ANN TREDGETT.

DECLARATION OF CHARLES ORTON.

The legal formula of CHARLES ORTON's Statutory Declaration is exactly similar to that of Mrs. TREDGETT, so that there is no need to repeat it. The all-important statement contained in it is that of CHARLES ORTON, of Baltic Wharf, Plough Bridge, Rotherhithe, in the County of Surrey, night watchman, who declares as follows:—

"My brother, ARTHUR ORTON, had NO malformation of the genital organs whatever. I was twelve years older than he, and had many opportunities of seeing if such had been the case."

Declared at No. 28, Queen-street, Cheapside, this thirteenth day of February, 1878. [Signed]
Before me—HERBERT C. LADBURY, A Commissioner to Administer Oaths in the Supreme Court of Judicature in England. CHARLES ORTON.

DECLARATION OF MRS. ELIZABETH JURY.

The legal formula of Mrs. ELIZABETH JURY's Statutory Declaration is exactly similar to that of Mrs. TREDGETT, so that there is no need to repeat it. The all-important statement of hers runs thus:—

"I, ELIZABETH JURY, of 226, Upper-street, Islington, in the County of Middlesex, wife of GEORGE JURY, master mariner, do solemnly and sincerely declare as follows:—

"My brother, ARTHUR ORTON, had NO malformation of the genital organs whatever. I am perfectly certain of that fact, as I was his sister, and was in the habit of washing him all over when an infant."

Declared at No. 28, Queen-street, Cheapside, in the city of London, this thirteenth day of February, 1878. [Signed]
Before me—HERBERT C. LADBURY, A Commissioner to Administer Oaths in the Supreme Court of Judicature in England. ELIZABETH JURY.

See also a letter from Mr. GIBBES to Mr. HOLMES, dated 29th July, 1867, in which GIBBES speaks of the malformation as "another peculiarity" (Vol. II., page 411). The reader will remember that TICHBORNE sent Lady DOUGHTY "a withered leaf," and from a passage of his in a letter dated January 31st, 1851, it would almost appear as if he had gone even further than this symbolic mode of communicating a painful fact; for he says: "But it is unfortunately too much happiness for me, so that I much better not think about it, because it makes me unhappy. I shall do much better to go to India for a certain number of years, and come back to be able *to see my brother settled in life, and retire afterwards quietly into the country far from the world*, and do as much good to my relatives as I possibly can. *That I have explained to you last Tuesday night in your room, which conversation I hope you have not forgotten.*" Did ROGER then delicately communicate the fact to his Aunt? If he did, what becomes of the Chief Justice's pretended shock to his feelings at hearing that his Mother had ascertained the fact for herself? (See ROGER's letter to Lady DOUGHTY, dated February 16th, 1851, cited Vol. III., page 332.) He would seem also to have excused himself to Lady DOUGHTY for his devotion to drink, by a desire to drown his sorrows, and leave the world because of his sad condition. In her letter to him of April 24th, 1851, she writes: "Did you put a withered leaf in your letter? Was it an emblem of yourself? If so, throw it aside, look to the bright-green leaves now opening around us in spring, and say, 'I will not be the withered leaf; but resisting every inclination *to drown care and shorten my days*, turn," &c., &c. (General references to this subject occur Vol. III., 206, 207, 330, 342, 343.) In a letter which he writes to GOSFORD, marked "Private and Confidential," and dated from Buenos Ayres, March 17th, 1854, ROGER writes, "As he (EVERARD ARUNDELL) is going into the noviciate at Stonyhurst to become a Jesuit, I don't think *that in case there should be no male issue from either me or my brother*, it would be desirable to leave him such power as named in my Will in the property." His servant MOORE probably knew of the malformation, for in one of ROGER's letters to GOSFORD he says, "I was quite surprised to hear from almost everybody on board *what extraordinary rumours* MOORE *had been spreading upon me.* . . . It is not my intention to set up a house, *as it is not my intention to marry.*" It is odd, if GOSFORD had such a Sealed Packet, as *he* pretends he either was not now asked for it, or that he did not return it at once after this announcement.

"When you were coming home on board the 'Rakaia' did you meet two men named HODGSON and JONES?—I did.

"Upon your solemn oath, didn't you say to both of these men that you had St. Vitus's dance when you left England?—Certainly not.

"Then it must have been an invention?—It must.

"Have you ever said it to anybody?—Never.

"If you did say so, would it be true or untrue?—It would be untrue.

"Did you happen to know if your intimate friend, ARTHUR ORTON, had St. Vitus's dance?—I don't know.

"Did he ever tell you?—No."

Gentlemen of the Jury: I have not seen JOHN PERRIN; but let us go on. I want to see ALFRED JONES. This person being brought into connection, or supposed connection, with the Defendant in 1866, is heralded in by reference to what may have occurred at Stonyhurst in 1847. Thus it is:—

"But in your direct examination you said you began skinning and stuffing birds at Stonyhurst. Is that correct?—No, I learnt it first in France.

"Where in France? In Paris?—In a birdstuffer's in Paris.

"Whereabouts?—I can't tell you.

"Surely you can tell me where the birdstuffer lived who taught you to stuff birds?—I don't remember.

"You can't tell in what part of Paris?—No.

"How came you to leave Stonyhurst?—I decline to answer that question.

"But I must ask you?—I won't answer.

"The CHIEF JUSTICE: What grounds have you for objecting?

"CLAIMANT: Very strong grounds.

"The CHIEF JUSTICE: What are they?

"CLAIMANT: I didn't wish to stay any longer. (To the Solicitor-General) I have another reason, and you know it.

"You impute an amount of knowledge to me that I don't possess. You decline to tell me?—(No answer.)

"You have been in Paris and at Stonyhurst, and when you left Stonyhurst you were nearly twenty years of age?—I was not far off.

"Do you recollect coming home from Australia on board the 'Rakaia'?—Yes.

"You came from Australia to New York, and from New York to England?—Yes.

"Did you come from New York with a Mr. ALFRED JONES?—I did.

"Did you give him an account of that part of your life with which we have been dealing to-day?—Certainly not.

"Did you say anything to him?—Yes. He asked me to write him down something that he might write a book from; and I may as well add that the papers I gave him were stolen on their transmission by post to me, and that you have them now.

"We shall see what Mr. ALFRED JONES says about that himself. Did you tell him that 'when you were about five years of age you were living in Paris and sleeping with the nurse, and that a house on fire on the opposite side of the street woke you'?—Certainly not.

"Anything like it?—No.

"'That the nurse screamed out that the house was on fire, and that they would all be burnt, and that she ran down stairs and left you.' Did you tell him that?—I don't think so.

"Did you say anything like it?—Not that I remember.

"Will you swear you didn't say something to that effect?—I certainly never told him anything of the kind.

"Will you swear you did not?—I will.

"'That the fright excited you, and brought on St. Vitus's dance'?—Certainly not; nothing like it.

"'That a Mr. WM. FERGUSON, a surgeon, residing in Finsbury-square, was in Paris at the time, that he was called in, and that you were sent over to London to live with Mr. FERGUSON, in Finsbury-square, for three years'?—Certainly not.

"Question repeated.—I will swear I never said anything of the kind.

"Then it is a pure invention?—I never heard of it before.

"'That you returned to Paris not cured, and that many French physicians were called in, but did you no good; that you were then sent to Stonyhurst, where you remained for some years, and afterwards returned to Paris'?—I may have mentioned Stonyhurst.

"That's likely; but did you mention the rest?—No.

"Or anything of the kind?—No; I will swear I did not.

"'That you were found in some act of familiarity with one of your Father's maids; that your Father found you and paid for a commission in the 6th Dragoons for you'?—Certainly not; I never told him anything of the kind.

"'That you went down to a Mr. ROBERTSON, in Hertfordshire, to shoot and ride with him.' Is this a delusion?—It certainly never came from me.

"You never said it or wrote it?—Not that part.

"'That Mr. ROBERTSON had a daughter, named MARY, with whom you fell in love'?—I didn't know any such person.

"I didn't say you did—that is not the point. Did you tell Mr. ALFRED JONES that you did?—I never did.

"That you swear?—That I swear.

"'That one day you were returning home with Mr. ROBERTSON, and going into the parlour to take some beer, when, to your surprise you found your Papa, who had got admission, saying he was a friend of yours, and that MARY was sitting with him, and told him all about your love affair.' Anything like that?—Not a word.

"No approach to it at all?—No.

"Neither by word of mouth or writing?—I think not.

"Think not! You must know?—I have no recollection of anything of the kind.

"Did one single syllable of this happen?—Certainly not.

"If that had happened, have you the slightest doubt you didn't tell Mr. JONES about it?—No.

"Either by word of mouth or writing?—I think what I wrote about was a different subject altogether. I didn't write words to that effect.

"'That Papa "collared" you, and insisted on you leaving the house immediately'?—I will swear I didn't say that or write it.

"'That you and your Father did so, and soon met a carriage which took you to an hotel at Ellestree called the Billows.' Did you say that or write that?—No.

"Or anything like it?—No.

"'That your Father then ordered dinner and a double-bedded room, and said nothing to you till eight o'clock, when you went to bed.' Did you say that or anything like it?—No.

"'That your Father locked the door, and that in the morning you went to London, and went to London Bridge and took the boat which took you down to the Isle of Wight.' Did you write or say anything of that sort?—No.

"Nothing like it?—Not one word alluded to in it.

"'That there, on hearing a bell, you looked out of the window, and saw your Brother, and your Mother, and an old yachtsman'?—Nothing of the kind.

"Nor said nor wrote one word approaching it?—No.

"That you swear?—Yes.

"'That your Mother kissed you and wept, and upbraided you gently for your behaviour.' Did you write or say anything like that?—No.

"'That you said, "Mamma, what is done cannot be undone"?'—I said nothing of the kind.

"'That she went to your Papa and said she would make you friends, and that your Papa came in and said he didn't care for anything you had done except throwing yourself away upon that worthless girl' (meaning poor Miss ROBERTSON)?—Nothing of the kind.

"Nothing of this sort at all?—Nothing like it that I can remember.

"Surely you can remember something of what took place when you were coming from New York to England in 1866?—I wrote something, but nothing in the least like that.

"'That you went out—Papa, and Mamma, and your Brother, and yourself—and got on board the yacht which took you to Southampton.' Did you say that or write it?—No.

"'And from Southampton you went by a carriage to where your Uncle was living.' Is that true?—No.

"'That your Uncle seemed to think little of your conduct, and so liked you that he said you should stop with him'?—No, not that I know of.

"Not that you know of! Surely you couldn't have said or written this without knowing it?—I said no, I didn't.

"'And that then your Father, Mamma, and ALFRED went home.' Is the whole of that an absolute invention?—I never said anything of that.

"I mean that to impute to you that you did say so was an absolute invention?—Certainly.

"You say you did write something for him?—Yes.

"And he sent it back to you?—Yes, but it fell into the hands of your Detectives.

"My Detectives?—I beg your pardon, Sir JOHN; I mean the Detectives employed against me.

"What did you write?

"Serjeant BALLANTINE: I object to that question.

"The SOLICITOR-GENERAL: You never saw the paper since?

"The CLAIMANT: No, it fell into your hands.

"Fell into my hands?—Yes. What other conclusion can I come to, when the boy I send with my letters is stopped, and the addresses looked at, and when my servants are offered half-a-crown for a bit of blotting paper.

"I may ask you if what you wrote was true?—It was not true, and not intended to be true.

"Did you profess to give Mr. JONES and the Captain of the ship a true account of your life?—Certainly not.

"Did you ever tell anything to the Captain—anything about it?—No.

"Did you profess to give Mr. JONES an account of part of your life?—Nothing of the sort; my life was alluded to in it.

"Did you profess to give in the document a true account of your life so far as it went?—Certainly not.

"Have you ever had St. Vitus's dance in your life?—No.

"Have you heard so?—I have often heard people say so.

"Who?—Hundreds of people—scores at least.

"Tell me any one living person who ever told you you had St. Vitus's dance?—I daresay I could if I thought of it.

"I wish you would.—I could to-morrow morning perhaps.

"To-morrow morning we shall have other matters to deal with. Can't you give me the name of any person who questioned you

about St. Vitus's dance, or anything like it?—I think there is one—a man in Northampton.

"Is he a friend of yours?—I met him several times.

"Is he a gentleman, or a trader, or a labourer?—He is a gentleman, I think—he has no profession.

"Then I suppose that is why he is a gentleman. The legal definition of a gentleman is one having no ostensible means of living. (Laughter.) How came he to speak to you about St. Vitus's dance?—He asked me why I twitched my eyes, and inquired if I had St. Vitus's dance.

"Do you remember having received a letter from PEDRO CASTRO about a disease called San Vito?—No.

"Do you know what San Vito is?—I think it implies madness."

Gentlemen, is this true? It it all fact, or fiction? Where is JONES? Where again, I ask, is PERRIN? Where is STEVENS? Where is GUILFOYLE? Where is CHARLES ORTON? Where are the ORTON Sisters? Where, in fine, are a whole regiment of persons, with whose names this Defendant is confronted in the Common Pleas? Where is Monsignor DUPANLOUP, "the Illustrious" (as I think he has been called), who was to prove that this gentleman was 12 months, or at all events a very considerable time, under his tuition? These are Phantoms. Yet upon their shadowy voices you are called upon to convict and to condemn this man.

"There happened once," says MILTON, "as we find in ESDRAS and JOSEPHUS, authors not less believed than any under sacred, to be a great and solemn debate in the court of DARIUS, what thing was to be accounted strongest of all others. He that could resolve this, in reward of his excellent wisdom, should be clad in purple, drink in gold, sleep on a bed of gold, and sit next DARIUS. None but they, doubtless, who were reputed wise, had the question propounded to them, who, after some respite given them by the King to consider in full assembly of all his lords and gravest counsellors, returned severally what they thought. The first held that Wine was the strongest: another that the King was strongest: but ZEROBABEL, Prince of the captive Jews, and heir to the crown of Judah, being one of them, proved Women to be stronger than the King; for that he had himself seen a concubine take his crown from off his head, and set it upon her own: and others beside him had likewise seen the same feat done, and not in jest. Yet he proved on, and it was so yielded by the King himself, and all his sages, that neither Wine, nor Women, nor the King, but TRUTH, of all other things was the strongest." *Eikonoklastes.* Gentlemen, I beseech you to

MILTON.

take this apologue to heart. Prejudice, like Wine, may have intoxicated you at the outset against the claim of this gentleman: but Prejudice, though powerful, should yield before the force of proof. So, that this is a Prosecution by the Sovereign may for a moment have had its weight; for the Sovereign should not prosecute unless there is a clear case of guilt. And though the Crown in this Trial has brought all its influence—and very much more than its just influence—to bear against this unhappy man, still that very fact has a tendency to weaken, if not to destroy, its value: and those who represent the Sovereign power in this Court have in truth degraded it by their ribaldry, their insolence, and their "foregone conclusions of guilt," when they should be impartial as Heaven itself. So, too, have the spells of Women been introduced into this unhappy enquiry. All their arts have been united in the cause of Lady RADCLIFFE. They have sought to take as it were the very Crown of Justice, and to place it upon *her* head—to the manifest derogation and disgrace of the royal dignity. But the fascinations of the concubine I hope will fail: and that as in the olden days it was conceded that Truth above all other things was the strongest, so, likewise, it will be found now; and that in the triumph of this Defendant over his accusers, proof will be afforded to the world that Truth in an English Court of Justice will ever be Omnipotent.

I must now ask you to look at another portion of the insinuations of the Prosecution that I have not entered into yet: and that is, that this is a gigantic conspiracy between Lord RIVERS, Mr. GUILDFORD ONSLOW, Mr. WHALLEY, the Defendant, Father GUY, Mr. STUBBS, Mr. BULPETT, Miss BRAINE, Mr. SPOFFORTH, and others. Nay, more, it is suggested that persons of this class in life assist him with secret information as to incidents in ROGER TICHBORNE'S life. What object can they have? Men never act without an object. It certainly is one of the most frightful charges that can be made against gentlemen, and it was to be hoped that the Prosecution would have made the strictest inquiry before they entered upon it. Lord RIVERS is a Peer of England, and bears, I believe, the highest character in the society in which he moves, and I believe he moves in the highest. Have we heard one thing against this gentleman that could justify the allusions to him? What in the world has Mr. ONSLOW done to justify the frequent mention of his name here? If his name has been asked here of the various Witnesses once it has been asked fifty times. Why are all these aspersions cast on these gentlemen? Why are you asked to believe that these are dishonourable men who are abetting this man in a most wicked cause? We have had similar imputations cast on a clergyman—Mr. GUY, of Liverpool. What is there to justify that? What is there to justify the attack on Mr. BULPETT? Is it to be supposed that every one who interests himself in the Defence is a person of black and guilty mind? What can be said against Miss BRAINE? What have they said against Mr. STUBBS? He seems to be a

gentleman farmer down in Hampshire, but because he is connected with the Defence these aspersions are cast upon him. The changes were also rung on the name of Mr. SPOFFORTH. I could not have complained if these insinuations had been founded on fact. But the names of these Witnesses have been paraded and scandalised before the world without a single thing to show that they are worthy of a moment's reprobation. Fortunately for Mr. HOPKINS, he is dead; Mr. TURVILLE is absent; Mr. GIBBES, so long as he gave evidence for the Prosecution, was quite right, but the moment he gives evidence of a malformation you are told he is not to be believed. Without any imputation being substantiated against CARTER and MCCANN, Mr. HAWKINS has thought it right to insinuate that they suborned Witnesses. If CARTER and M'CANN had endeavoured to suborn Witnesses, or to do anything unfair, it was in Mr. HAWKINS's power to prove it. He would have been furnished with information of the fact, and would have been entitled to use it. I regard it, therefore, as a most wicked thing that these insinuations should be made without any proof whatever. It was perpetually insinuated that they were suborning Witnesses. Then again, insinuations are made against Miss BRAINE, but it appeared to me that there was nothing whatever to justify them, and she did herself great honour by the manner in which she gave her evidence. I now come to a point which I admit that I have not answered, and am not in a position to answer. The way in which I ask you to look upon this matter is that it is a case of absolute forgetfulness. I mean the visit to LLOYDS'. The visit to LLOYDS' has been made one of the assignments of perjury. Now, bear in mind that there is no evidence that would lead to the conclusion that ROGER TICHBORNE before he left this country knew of such an establishment as LLOYDS'. All business men of course know it, but it by no means follows that unbusiness men like young cavalry officers know anything about it. This man immediately after he comes back to this country goes there, or is taken there by HOLMES, and at the Civil Trial he was cross-examined in reference to that visit, and his evidence was as follows:

"Were you ever at LLOYD'S?—I told you before that I never went to LLOYDS'; I do not even know where it is. I can tell you it is at the Royal Exchange. Now do you mean to swear that you did not, in company with one or two others, go to LLOYDS'?—Certainly not; I do not remember ever being at the Royal Exchange in my life. What I ask you is, whether you did not go to LLOYDS' and look at some of the books?—I did not; I have no recollection of the place at all. It is at the Royal Exchange?—Then all I can say is I do not know where it is. You know where LLOYDS' is, the place where you go to ascertain the course of ships. Now I ask you whether you did not go to LLOYDS' yourself with your legal adviser at an interval of two or three days, and make search in LLOYDS' books?—I have no knowledge of anything of the kind."

More questions follow, but the answers are all to the same effect, that he has no recollection of ever being there. Now I submit to you that this man would never have sworn so boldly as he did if he had had any recollection, more especially when the man was confronted with him who saw him there. It was a matter of entire forgetfulness. This man, you see, was quite new to the business part of London, and with the exception of GLYN'S bank he probably knew nothing of any part of London to the east of Temple-bar; and therefore I invite you to believe that his denying so many times that he was ever at LLOYDS' was not perjury, but mere forgetfulness. He was further asked if he did not go to LLOYDS' to make inquiries relating to the 'Osprey,' and he says he never did, and that no inquiry was made by Mr. HOLMES in his hearing, or to his knowledge. The questions were put to him distinctly and clearly as if to intimate that they meant to punish him if he did not answer truly, and he still swore that he was never there, and that a gentleman who was confronted with him in Court never gave him a copy of an entry, but when asked if Mr. HOLMES never brought it to his notice, he said, "Of course he did, I keep telling you." Now, gentlemen, I do not attempt to aver that he was not at LLOYDS', because no one could doubt that he was there, but I say that unless he were out of his senses he would not be so rash and wild, having had his attention called to the fact, as to persistently deny it; and I say if your finding should eventually be that this man is ROGER TICHBORNE you will also come to the conclusion that ROGER TICHBORNE was not likely to have committed perjury, and that it was a mere act of forgetfulness.

A JUROR: The motive of the visit is very patent.

Dr. KENEALY: The motive of the visit was to see whether they could get confirmatory evidence as to the 'Osprey' and the 'Bella,' but why he should desire to conceal that motive from the Jury I do not know, because over and over again he seems to have intimated that Mr. HOLMES had given him some information of the discovery that went to confirm his story.

The LORD CHIEF JUSTICE: I understood that the Defendant went to LLOYD'S to ascertain if there was an 'Osprey' that went to Melbourne, and that finding none excepting an 'Osprey' that would not do, he then adopted the 'Themis,' and then, in order that the 'Themis' might not appear as the result of his search at LLOYD'S, he denied having been at LLOYDS.

Dr. KENEALY: Then I was wrong in my conception. I thought he went to find some information as to the ship which carried him to Melbourne.

The LORD CHIEF JUSTICE: He searched for an 'Osprey,' and did not desire that the fact should be known, and therefore denied it. *It is not a mere want of recollection, but a denial of a fact of which he must have had knowledge.*

Dr. KENEALY: As I understand it, this man wanted some information of a certain ship that carried him to Melbourne.

The LORD CHIEF JUSTICE: No; they at once asked for the 'Osprey.' They did not go for the purpose of ascertaining what ship there was that went to Melbourne, but in the first instance they asked after an 'Osprey,' and they could find no 'Osprey' that suited the circumstances.

A JUROR: I suppose if they did not ask for a particular ship they would not be allowed to look at the books.

Mr. HAWKINS: They made searches at LLOYDS' for the 'Osprey' and the 'Bella.'

The LORD CHIEF JUSTICE: They went to LLOYDS', and after the search said they would call again another day, as the Claimant had to go to Paris.

Dr. KENEALY: Well, Gentlemen, the man had only just returned to England. He had probably never heard of LLOYDS' before in his life. It was recalled to him in every way, and I submit that it is incredible that he should deny it except as a mere act of forgetfulness. Mr. HODSON said the Defendant told him on his way home that he was saved by the 'Osprey,' and therefore they cannot say that he went to LLOYDS' to seek out a vessel which had saved him. He had already stated on his way home it was the 'Osprey.'

The LORD CHIEF JUSTICE: He did it before; he did it in the declaration at Sydney.

Dr. KENEALY: He went there * from an honest motive, and if so, why on earth should he deny having made it? I can't see why, and I say, therefore, that being a bonâ-fide search, it was a case of absolute forgetfulness. Failing, then, to find anything about the 'Osprey,' which he had already mentioned, he makes the journey to Liverpool, and I say the search he made there was as honest and bonâ-fide as his visit to LLOYDS'. That journey to Liverpool was heralded by a correspondence with Mr. HOLMES and Mr. CHARLES BRIDGER, and I submit that his letters show a perfectly honest search. His advisers must have been perfectly well aware of the state of his mind during the period which followed his rescue, and it may have occurred to them that he had made some mistake. If this was so, and they expressed their thoughts to him, it may have given rise to serious doubts in his mind as to whether the 'Osprey,' instead of being the vessel which picked him up was not one which was spoken or passed on the voyage to Melbourne after the rescue. Am I to be told, then, that there is guilt in such a search as that at Liverpool? In my humble judgment there is not. When he goes to Liverpool he is in constant communication with ROUSE. He writes the following letter to that gentleman:—

"July 20th, 1868.

"I expect to be here for a day or two, but we have been very successful so far, as I have the owner's assistance to find the log. It is now beyond all doubt that it was the 'Themis' that picked us up. The owners, brokers, and agents are convinced of that, and they are doing all they can to help me."

How the brokers were convinced I do not know, unless it was from circumstances stated by him. It seems to have been a suggestion of Mr. DE WOLF that they should advertise for some of the ship's crew of the 'Themis.' Mr. HOLMES writes to the effect that the Claimant was under the impression that it was the 'Themis' which picked him up, and that a search was being made to establish the fact. Would this man have been so insane as to set the owners to find the official log, which would have given no account of the rescue of the crew of the 'Bella' if he had been an impostor? He had a private log from the 'Themis,' but naturally that gave no such fact. All this is strong proof of the search being a genuine one, and further that this, the letters from the Defendant and Mr. HOLMES on the subject which have been submitted to you show that such was the case.

Gentlemen, you are now trying three substantial issues, upon which this Case depends, and I intend to take them in order, 1, 2, 3. The first issue is, Is he ORTON? The second is, Is he TICHBORNE? And the third is, Did he seduce Miss DOUGHTY? I shall deal with them in their consecutive order. I think, if I have not already convinced you by the evidence I have called, that the observations I am now about to offer upon the evidence as to ORTON will satisfy you that there is no pretence whatever for the allegation that the Defendant is the son of the Wapping butcher. Whoever this man is he is not ORTON. You can find him not to be TICHBORNE if you please, but you never can find him to be ORTON; of that I am convinced. Then upon the question of TICHBORNE, I shall deal with it as briefly as possible, and contrast the evidence of the Prosecution on the subject with the counter-evidence for the Defence, and I shall confidently claim your verdict on that point likewise. Then, having disproved, as I hope I shall have done, that he is ORTON, and having proved conclusively that he is TICHBORNE, I shall direct my attention to the third issue—namely, that which has reference to Lady RADCLIFFE. If I establish that he is TICHBORNE, I think I shall be able to give you good and ample grounds for believing that Lady RADCLIFFE is not a good and credible Witness when she denies the fact of the seduction;

* See upon this subject, Vol. III., pp. 206, 207, 330, 342, 343, 346.

that there are plenty of Witnesses who demonstrate the probability of the seduction having taken place, and that it being established in your minds that he is Tichborne, you must conclude that the probabilities are that his story is true. You may come to the conclusion, if you think fit, that the evidence on the matter is of such a conflicting nature that you can arrive at no verdict at all. You may either acquit him entirely upon that, which I don't want you to do, because I don't want you to cast a stigma upon any one; or, you may say, "The evidence is of such a nature that we would rather disagree, and come to no iverdict." If I were left to my own private inclination I would invite you to such a conclusion rather than to one which would be adverse to the character of the lady. Now, I do not hesitate at the outset of the Orton Case to claim a verdict and a victory for the Defendant. If ever a Case was demonstrated to be absolutely and entirely untrue from the beginning to the end, it must be this Orton theory. We have it from the evidence on both sides that Orton from the earliest period, if remarkable for anything, was remarkable for gross clumsiness of manner and demeanour; that he was a sort of bear that could not by any possibility be licked into human shape; that he was a person of base and brutal temper, so much so as to obtain from his mental and physical characteristics the nickname of "Bullocky"—a name that suggests a rough, hectoring sort of ruffian; a man who went about the streets as a species of colossal bullock, not caring whom he knocked down by the way; without consideration for anyone's feelings in the gratification of his capricious cruelty of the moment; and not caring for anybody. That he was a person always very fat, and that he was a stupid, slobbering, dirty fellow in every way, I think is made out very clearly. Upon the subject of fatness, Gentlemen, I wish you to be good enough to attend to one observation which I am about to make, and which I think you will find to be a physiological fact. Of course there are exceptions, as there are to all rules; but you will find it to be a physiological fact that in the majority of cases persons who in their early youth were fat, as they get older, grow thin; and the opposite rule prevails, namely, that persons who are remarkably thin in early life develop into persons of large size. It is one of the curiosities of physiology that most fat people in their early youth are thin, and have swelled out in middle life to extraordinary sizes. In addition to these characteristics of this man Arthur Orton, he was a person who was low, vulgar, and illiterate in the extreme, who it was impossible should have anything like a gentlemanly idea. As to his sojourn at Melipilla with those generous people who hospitably entertained him and lent horses to him—to a fellow little better than a beggar—a runaway sailor—it is so incredible that I will not say a word about it. We have the account of his settlement in Hobart Town, and the extraordinary story told by Mrs. Jury; but if you contrast the two men you will see that Arthur Orton was entirely unlike Roger Tichborne. I have given you evidence, as you will remember, of two persons, one of whom, named Cotton, saw Orton in California in 1850, when undoubtedly Roger Tichborne was in England. The other Witness, Pole, saw him in 1866, when this Defendant was in England.

The Lord Chief Justice: Saw him in 1866 in America?

Dr. Kenealy: No: in Australia, my lord. Those are two circumstances which I will ask you to bear in mind. I will not read you the testimony of those two Witnesses now, but I will do so when I come to comment on the evidence I have called. A query must more than once have occurred to your minds—namely, "What has become of Orton, that we get no information of his whereabouts?" I want to know that, Gentlemen. I take it for granted that the Defendant is not Orton; then I want to know what has become of him? Orton is not a person who is inquired for now for the first time. I call your attention to a very remarkable letter written by Mr. Spofforth in February, 1871, to Mr. Cater, in which the writer asks Mr. Cater, who was going out to Australia, to endeavour by inquiries at Wagga-Wagga to discover Arthur Orton, and to get him to ship for England, and to hasten his arrival as much as possible. Mr. Spofforth says he advised Sir Roger that it would be worth £500 to procure the attendance of Arthur Orton, and enjoins every exertion to get him home in time for the Trial. Now, Gentlemen, I put the letter before you as an evidence of a real bonâ-fide attempt on the part of the Defendant to discover Arthur Orton, and to show that he tried every available means to secure that end. We must ask ourselves, then, "Is he alive or is he dead?" You have, no doubt, read several paragraphs in the newspapers on the subject; but I will not call your attention to them, as we are now dealing with evidence. There are a good many reasons why we might suppose that he is really dead. If he is not, I can hardly imagine why he should not appear as a Witness before you. The life which Arthur Orton is said by many of the Witnesses to have been pursuing is a life that very frequently gets cut short by violence. You have heard of "Ballarat Harry"——

The Lord Chief Justice: But he was a respectable man. He was a well-known digger, who was murdered. One of your Witnesses spoke very kindly indeed of him—spoke of him, I mean, as a man whom no one but a ruffian would have injured.

Dr. Kenealy: I thought, from his name, "Ballarat Harry," that he was one of the many roughs to be met with in the bush. It is a singular thing that two of the brothers of Arthur Orton have disappeared for a great many years, and no one knows what has become of them.

The Lord Chief Justice: What are their names? One of them is Edmund.

Dr. Kenealy: The other is William, I believe, my lord. Whether they joined Arthur in Australia, or whether they followed adventurous lives in other lands, and met with speedy deaths, no one knows; but it is a singular thing that the Orton Family has received no communication from them for years.

The Lord Chief Justice: We don't know that. We know that they last heard of Arthur Orton on the 9th June, 1854.

Dr. Kenealy: We have no proof of tidings having reached England from those brothers, and I say that you might fairly presume that those men either joined Arthur or took a course of their own which ended in their disappearance from the world. And when I say that Arthur Orton may be dead because he has not been heard of by his family, I think this statement is strengthened by the disappearance of two of his brothers. How often does it happen, when there are large families, that two or three of them follow the same life and come to the same end! From all we hear of Arthur Orton, he was a person likely enough to come to an untimely end! He was offensive, brutal, powerful; and it not unfrequently happens that men such as he is described to have been find themselves involved in scrapes with weaker men, and physical force ultimately succumbs to the bullet or the knife. There is one person who, I think, might have been able to give us valuable information upon this matter—a person who has been in Court during the whole of this Prosecution—namely, Charles Orton. Charles Orton—I don't mean it offensively—belongs to what one of my Witnesses described as "Hawkins's party." Whether or not there are grounds for supposing he was in the interest of the Family I must leave to you. My lord has said that there is no ground for the statement about the annuity, and I am not inclined, after that, to say there is; but still it might have been denied by putting Charles Orton into the box to say whether this gentleman (the Defendant) was his brother or not. He could have told us what communication the family had had with Arthur, if, indeed, they have had any, since 1854. If a man is proud of the life he is leading, he would probably let his relations know something about it, and, in the same way, if the lost brothers were like Captain George Orton, of Singapore, who made a respectable position for himself, we should have heard about them in all probability. The family, however, have heard nothing. I should think Charles Orton would have been able to give us some information as to whether his brother was alive or not. Was the Prosecution afraid that I should ask Charles Orton a question of that kind? whether he really had any moral doubt from circumstances that had come to his knowledge that his brother was dead? I cannot conceive why they did not call him, because he would have been a most efficient Witness. Were they afraid of that remarkable physical distinction which you could see existed between Charles Orton and the Defendant? Charles Orton, you know, is a remarkably thin and worn man, justifying to some extent the observation which I have already made as to persons who have a tendency to be fat in the early portions of their lives growing thin as they grow older. You will remember all the family were called "Bullocky Ortons," with the exception of one, viz., "Gentleman Orton."

The Foreman of the Jury: I think Charles Orton had a deformity.

Dr. Kenealy: Yes; but it does not appear when he got it. A man cut out by nature for growing to the height of six feet would, if he met with an accident in youth causing deformity, not grow more than four feet to four feet ten inches in height. But Charles Orton seemed to be a tolerably tall man, and not what would in ordinary parlance be called a hump-backed man. Now, Gentlemen, there are two other persons whom the Prosecution might have put into that box if they did not wish you to observe their distinct physical peculiarities when compared with the Defendant. I allude to Mrs. Tredgett and Mrs. Jury.

Mr. Taylor (Juror): Why did not you call them?

Dr. Kenealy: I am going to tell you. I do not intend to shirk your question. At present I want to know why Mr. Hawkins did not do so?

The Lord Chief Justice: *That would have been an act of the greatest folly. They were avowedly and admittedly in your pay*, and had made affidavits in favour of the Defendant. How could you expect Mr. Hawkins to bring them into Court?

Dr. Kenealy: Well, my lord, I certainly should not have been surprised if he had called them.

The Lord Chief Justice: I think it would have surprised anybody else. *I must say that when you closed your Wapping Case without calling those sisters I was amazed.*

Mr. Justice Lush: *So was I*, particularly after the evidence given by one of your Witnesses that they very much resembled their brother.

The Lord Chief Justice: You may have had very good reasons for not calling them, but you could not expect the other side to call them.

Dr. Kenealy: The reasons why I did not call them are satisfying to my own mind. Mr. Hawkins put questions to some of my Witnesses respecting Mrs. Tredgett and Mrs. Jury, as if they were in the most blissful ignorance as to where Charles

Orton's sisters were. What was his object in doing that I could not understand.

The Lord Chief Justice: What occurred to me was that Mr. Hawkins wished to fix those Witnesses with a knowledge of having recently seen the sisters in order to force you to call them.

Dr. Kenealy: Gentlemen, I have already suggested to you that the reason why Charles Orton was not called may have been that he knew that Arthur Orton was dead.

The Lord Chief Justice: I can only say that if Mr. Hawkins, knowing that Arthur Orton was dead, had abstained from putting Charles Orton in the box, he would in conducting this Prosecution have covered himself with eternal disgrace.

Dr. Kenealy: I did not mean to imply that. I have no doubt that there are a vast number of secrets in this Case which are not known to Mr. Hawkins.

The Lord Chief Justice: Mr. Hawkins, as the leader in this Cause, would exercise his discretion; and to have kept back such an important fact in favour of the Defendant would have been perfectly disgraceful. It is a thing of which I am sure Mr. Hawkins is incapable.

Dr. Kenealy: I never intended to say that he was.

The Lord Chief Justice: But, unfortunately, your argument necessarily implies that.

Dr. Kenealy: It is impossible for Counsel in any Cause to be acquainted with all the inner secrets and mysteries that surround it.

The Lord Chief Justice: Mr. Hawkins is the responsible leader of the Prosecution.

Dr. Kenealy: It is not to be supposed that in matters of this kind things which are not very creditable are ever suggested to a person in the position of Mr. Hawkins or of Mr. Gray. When your lordship was a leader at the Bar you never thought of asking an Attorney why a particular Witness was doubtful?

The Lord Chief Justice: If a Witness had been material and the Attorney said he was doubtful, I should have enquired why he was a doubtful Witness and we must forego the advantage of his testimony?

Dr. Kenealy: For my own part I think Counsel have quite enough to do without putting themselves to the trouble of entering into a minute cross-examination of the Attorney on such points. It is a matter of idiosyncracy and feeling, but in a large Case like this we must rely on the Attorneys, and Counsel might have been told, "We had better not call Charles Orton—he will do us no good." I meant no more than that. What I was saying, Gentlemen, was that it might have been known or suspected by Charles Orton that his brother is not living. But if they did not call him, why not put Mrs. Tredgett and Mrs. Jury (Arthur Orton's sisters) in the box? Could they not give information as to whether he is alive or dead? I have been asked why I did not call them. I meet that question first by putting another. What have we heard of the Orton family from the outset of this Case to induce me to believe that they are eminently respectable and truthful Witnesses? Secondly, I ask what possible claim has the Defendant on them that he should rest his Case on their testimony? I say he has no claim. According to his evidence given in the Court of Common Pleas, the Defendant swore that he had only seen those women twice in his whole life. Is he, therefore, to put into the box the sisters of Charles Orton, who has been during the whole of the Trial sitting here openly and avowedly on the side of the Prosecution.

The Lord Chief Justice: Did you say "avowedly"?

Dr. Kenealy: Well, openly.

The Lord Chief Justice: That is the same thing.

Dr. Kenealy: Oh, yes. He was sitting on the back benches during the whole of the Case for the Prosecution.

The Lord Chief Justice: You say "openly and avowedly."

Dr. Kenealy: I am afraid there is scarcely any word I use that your lordship won't find fault with.

Mr. Justice Lush: *Are all the persons who are sitting on the back benches supposed to be on the side of the Prosecution?* (A laugh.)

Dr. Kenealy: Not all of them, but that is the particular quarter where such persons sit. Why should I put those women into the box and ignore the whole of the independent testimony of my fifty Witnesses called to disprove the Orton theory? Consider the enormous sums that have been paid to Witnesses. Am I to shut my eyes to the fact that any amount of gold would be forthcoming to obtain evidence of a particular kind which is deemed most important?

The Lord Chief Justice: Do you really mean to say, Dr. Kenealy, that the Treasury—the Public Prosecutors—*bought* these Witnesses?

Dr. Kenealy: My lord, I mean to say this with perfect boldness—that if my Case is true, Mrs. Haley and Mrs. McAlister have sworn falsely.

The Lord Chief Justice: Do you say they have been *paid* for swearing falsely?

Dr. Kenealy: *Your lordship is always putting a wrong construction upon my words.*

The Lord Chief Justice: I do not, neither will I allow you to say that I do so. You say the Witnesses have sworn falsely and have been paid for it. If you say that any amount of gold would be forthcoming to obtain such evidence, what does that mean but a charge of bribery against the Prosecutors?

Dr. Kenealy: I said any quantity of gold was forthcoming to obtain Witnesses of particular importance. Is that not true?

The Lord Chief Justice: No.

Dr. Kenealy: I hope the evidence justifies me in coming to such a conclusion.

The Lord Chief Justice: Nothing has transpired that warrants you in charging the Government of this country, the Public Prosecutors, with allowing any amount of gold to be forthcoming to bring evidence of the nature you describe.

Dr. Kenealy: I made no such charge.

The Lord Chief Justice: You are very unfortunate in your language then.

Dr. Kenealy: We have had plenty of evidence that, in addition to the Prosecutors, who have taken a public part in the matter, there are other persons employed.

The Lord Chief Justice: I venture to say that if you were bringing an accusation against the other persons employed of having been prepared to bribe Witnesses for the purpose of their giving evidence, that accusation is not justified or excused by anything that has transpired in Court.

Dr. Kenealy: If my Case is true, there must have been false evidence in this Case. What was the evidence of Mary Ann Loder? I should be the greatest fool to believe that evidence is not paid for. I am proceeding on the assumption that my Case is true, and that that of the Prosecution is not true.

The Lord Chief Justice: *Your imputations are unjustifiable.*

Dr. Kenealy: I am sorry there is so much that your lordship thinks unjustifiable.

Mr. Justice Lush: After the events of the last ten days I have listened to your imputations with astonishment, Dr. Kenealy.

Dr. Kenealy: I don't know why your lordship should remind me of my mistake in having called that man (Luie).

Mr. Justice Lush: Because there is no ground for what you have just said against the Prosecution, *and we do know what sort of Witness we have had within the last fortnight.*

Dr. Kenealy: I am assuming that my Client is Roger Tichborne, and in that case the Witnesses who swore that he was Arthur Orton must have sworn that which is not true. Did they all do it for nothing?

The Lord Chief Justice: Is it not possible that Witnesses may be mistaken? Whichever way the Case may be decided by the Jury, is it necessary to suppose that the Witnesses on the other side have sworn falsely? May they not have been mistaken?

Dr. Kenealy: I have said you have misinterpreted my words over and over again. I have said that I don't charge all the Witnesses with swearing falsely, and I have repeated *ad nauseam* that I have no doubt a vast number of Witnesses are mistaken in identity. As to Mary Ann Loder, what could induce her to get into that box and swear that that man is Arthur Orton, her old lover, if he is Roger Tichborne?

Mr. Justice Mellor: I really regret these discussions, and I had hoped that I should not have had to say a word. For fear, however, that if I did not it would be thought that I differ in opinion from the other Judges, I must say that I think I never heard such charges made upon such a foundation.

Dr. Kenealy: I must leave you, Gentlemen, to judge of that matter. The acquaintance which Hannah Johnson had with Arthur Orton was very slight, and I should not think of associating such a Witness as that and Mary Ann Loder in the same category.

But of what real value, Gentlemen, are the oaths of persons like this? Upon what will *you* find your verdict? Not upon mere oaths. Oaths, I fear, in certain cases, are to be had as plentifully as blackberries. In the State Trials of the past, how many innocent lives were destroyed, because oaths were easy to be got. By oaths, the life of Socrates was taken. By oaths the blood of Jesus was shed. By oaths the wretched Calas was condemned. There are always oaths, and persons ready to take them, when great—nay, even when petty—interests are involved. The modern theory seems to be that you must never impute perjury to any Witness who testifies in a Court of Justice. No matter how impudently he swears, you must say that "he is under a mistake." Thus we make terms with falsehood; we let it off easily; we must not wound the feelings of a false Witness. In order to spare *him*, we must declare what we are convinced is untrue. Is not this rank hypocrisy? Is it not the basest cowardice? Far be it from me so to abase myself. I would not, even though the venerable shade of Johnson himself arose before me, fresh from Bolt Court, and entreated me to do so. No circumstance in life, no prospect of reward, would influence me to degrade myself or render my acts unworthy of my own respect. And if I were to yield to this meanness I should despise myself. And I fear that *you* also would scorn me if I were to put before you such an untruth as that I believed Bellew and Loder and others were acting under "a mistake." There is no mistake—in my opinion there *can* be no mistake—in such people when they swear. Is Lord Bellew *mistaken* when he says that he tattooed my client? I don't believe it. Is Mina Jury *mistaken* when she swears to the Hobart Town curiosities? I don't believe it. Is Loder *mistaken* when she declares that the Defendant was her former lover? I don't believe it. And because I don't believe it, I won't say it. I care not for the odium or the abuse I may bring upon myself by this action. Neither here nor elsewhere can I, for any inducements, say what I do not think. Hence I regard such oaths as these

as nothing. You, Gentlemen, must not found your verdict upon oaths. You must base it upon evidence consonant with your common sense; with your instincts—for this instinct is a powerful and divine thing—and with your experience of life. Neither must you give it upon the Speech for the Prosecution. Such are often filled with sophistry: with partizanship. I do not say in this Case more than in others, but they must not be relied upon. We know what they were in the Common Pleas Trial. There we had suppression of the Truth: and suggestion of the False: constant misrepresentation of Facts; insinuation; suggestion—such as IAGO dealt in. Nor is your verdict to be upon the Judge's Summing-up. Here I speak with deference and respect, and hope my lord will forgive me.

The LORD CHIEF JUSTICE: Go on, Doctor KENEALY.

Dr. KENEALY: The duty of the Judge is clear; and I am sure it will be fulfilled. His office is to show the Case as it really exists; as the sun paints a picture under the photographer's hands. He takes no side; he comments with fairness; he does not advise. He only points out; he is careful not to let his own opinion be known—for then he would play the advocate—the Devil's Advocate, I may say—if he were to take one side or the other; more especially in a Criminal Case. A Judge advises on the law; he takes care that nothing is done which is not consonant with the law. This is his function, and so it has been from the most ancient period. He has nothing to do with the facts. Of these you alone are the judges. The moment he takes upon himself the part of a thirteenth Juror, he becomes a traitor to the oath he has sworn, and no longer represents the Sovereign, who is thoroughly impartial in all questions that come before her Courts. If I were to dilate upon this I should be wrong. Nobody knows better than my lord what his duties are. Nobody will perform them more duly. Future ages will look back upon these days, and will behold the Chief Judge calm and impassive as marble, holding the scales of justice with even hand, and crowned with equity like a rainbow.

And so, O Jurymen, may it be with you. Bear in mind that what *you* do, *never* can be undone. The notion of a New Trial in such a Case as this is out of the question. Do not delude yourselves with the fancy that if you go wrong all will be set right. If the Family win here, they will win for ever. They gain and they keep the estates from him who I contend is the rightful owner. Mr. Justice LUSH said that this Trial was to be final; it was to end all differences; there was to be no more controversy. Some of the Anti-TICHBORNE papers have said the same. His lordship has disclaimed the interpretation to which his language was liable: and I accepted the disclaimer. But note this—that if the Family win here, they win perhaps for ever: whereas if the Defendant wins, he really gains nothing but his liberty, and the opportunity of again demanding his own estates. From their actual possession he is as far away as ever.

[The Court then adjourned for luncheon.]

On its reassembling,

Dr. KENEALY continued: Gentlemen, it is a very hard thing for me to defend this man. I must do the best I can. I feel the difficulties that are opposed to me as something positively terrific. Every day I feel more and more that I have to surmount obstacles never before presented to any Counsel in Westminster Hall. I must rely on your judgment, and on the judgment of England. I shall endeavour to do my duty in the face of these difficulties. Nothing shall impede me, nothing shall frighten me; I come of a race that knows no fear.

I was saying to you, Gentlemen, when I was interrupted, that for Witnesses of importance there is any amount of gold. One of the most fatal blotches in the case against QUEEN CAROLINE, was the enormous sums of money paid to Witnesses; and I say this is also one of the worst blotches on the present Prosecution. When I find £500 paid to Mrs. JURY, or expected by her, £400 to HOPWOOD, £1,000 to Mrs. M'ALLISTER, and a thousand dollars to Mrs. HALEY, I say I am perfectly justified in coming to the conclusion that money might also be given to Mrs. TREDGETT and Mrs. JURY. Besides, as I said before, what claim has this Defendant on these women? I have seen women brought from the same neighbourhood who swore to you what, if my Case is true, they must have known to be false; and I never will believe these Witnesses were under a mistake. I mean such persons as MARY ANN LODER, Mrs. FAIRHEAD, and Mrs. JACKSON; and unless I adopt the theory that every Witness on behalf of the Prosecution is truthful and perfectly reliable, and not open to any imputation on their judgment, their memory, or their character, I might as well leave the Court, and allow this man to be dealt with as you please.

The LORD CHIEF JUSTICE: No person has said anything of the kind. You have a perfect and indisputable right to make such observations as you think proper on these three points.

Dr. KENEALY: Your lordship says that now. But whenever I appear to make an imputation upon a Witness, you at once fall upon me with some trenchant remarks.

The LORD CHIEF JUSTICE: When I think they are deserved.

Dr. KENEALY: Gentlemen, if I am to accept any such propositions as these, I might as well leave this Court, throw up my brief, and abandon this man to Newgate and to death. But I don't mean to do it. I don't care what reflections are cast on me; I will do my duty to the final end as well as I can. He may have made a mistake in choosing me for his Counsel; but I live in free England, and am defending the independence of the Bar, and will do my duty.

The LORD CHIEF JUSTICE: I desire you will not make use of such a remark again. It is a reflection on the Court, and we are as anxious to maintain the independence of the Bar as anyone. There is a great difference, however, between independence and licence.

Dr. KENEALY: Gentlemen, I shall assert the independence of the Bar, and not use any licence. The very moment the independence of the Bar ceases, the liberties of Englishmen are gone. I look upon it as of as much importance as the freedom of the press we hear so much about; and I will be guilty of no treason to the Bar as long as I can help it.

I was calling your attention to the large sums of money given to Witnesses of the class I have referred to, and I ask what is to raise any doubt in my mind that money might also be given to Mrs. TREDGETT and Mrs. JURY? Am I to believe—am I to be so wild, credulous, and foolish as to believe—that having paid one class of Witnesses, they will not pay another? I suppose I have some experience of life. I suppose I have some experience of Courts of Law. I must use it as best I can; and I say this, that in a Case of this enormous magnitude, where, if you convict this man, £25,000 a-year goes into the pockets of his adversaries, how do I know what they will not do? Has human nature become so perfect and so infallible that it will not be tempted by the prospect of the possession of gold? We know it is not so; and if I called Mrs. TREDGETT and Mrs. JURY into that box, and they, without showing any deliberate intention to mislead you, only hesitated when I asked them if that was their brother, my Case would be ruined. They would not need to go to the length of perjuring themselves, and saying he was. What a skilful Detective is likely to have suggested to them is only to appear to hesitate: and this hesitation would have been the ruin of my Case. That, therefore, is one of the reasons why I did not call these women, and it is a reason, I hope, every one of you will find satisfactory. Only one half-minute's delay in answering the question, and would it not have been used by Mr. HAWKINS as fatal to my Case? Was I to run a danger of that kind? Some people may tell me I ought; my own conscience told me I ought not, and I did not. Besides, there is only a pretence for saying they are on our side; the whole of the cross-examination of the Defendant showed that they were in communication with the Prosecution, and gave them information on which to work. Gentlemen, I don't think it astonishing, after all he has experienced, that the Defendant should be a man teeming with suspicion. Let me remind you of a letter written by Mr. HOLMES to some person in South America, in which he says that the TICHBORNE Family were trying to make the Defendant out to be a Wapping butcher, but he had made matters all right by taking him to the three sisters and the brother of the man, all of whom said they had never seen him before, and had made declarations to that effect.

Mr. Justice LUSH: To whom was that written?

Dr. KENEALY: It does not appear. Now, Gentlemen, if the Defendant used any undue means with CHARLES ORTON or any one else, why did the Prosecution not call CHARLES ORTON or any one else, and let them say, "In a moment of weakness, I was unfortunately persuaded to do a thing I will always regret. The Defendant and Mr. HOLMES came to me and offered me money and induced me to say I had never seen this man before; but now I say he is my brother." Why did they not do that? They are asking you to believe—and will afterwards press you to believe—that the Defendant's advisers induced LUIE to come forward and take a false oath for him. A stronger proof of guilt could not be proved than that, if it were proved; and if it happened that the Defendant or his advisers gave money to CHARLES ORTON or these women for making false declarations, Mr. HAWKINS would have been perfectly delighted. It would have been the salvation of his Case. No person could then hold up his head before you in favour of the Defendant. They talk of some paltry sum—£5, or £10, or at most £20—which this man said he gave to these women. Let the Prosecution put them in that box, and give them an opportunity of saying that was what induced them to say he was not their brother. Every man of you would be convinced at once. Why, then, do they shrink from that ordeal? Much is to be gathered from the appearance and demeanour of Witnesses. Only the other day I pointed out the great difference between the true wife and the false mistress.

Mr. TAYLOR (Juryman): The false mistress!

Dr. KENEALY: Well, false pretended mistress.

The JURYMAN: Oh, no.

Dr. KENEALY: Don't misconstrue my words, please. I don't mean it in any immoral sense, for there is no ground for that. I use the word in its wider signification in the sense of "sweetheart." I say these women were Witnesses whom Mr. HAWKINS ought to have called if the Defendant has really given them money and they were in a position to come forward and unbosom themselves of the whole transaction. That would have been a most terrible, a most unanswerable argument in favour of the Prosecution; but that they dared not do. I think I was justified in saying that the whole tenour of the cross-examination of the Defendant showed that these women were on the side of the opposite party; and holding that belief, I would only have exposed myself to ridicule and contempt by putting them in the

witness-box to give evidence in favour of this man. There is another matter to which I must call your attention. This man, who was supposed to be going about offering bribes to these Women, actually took his Attorney with him. If there was anything wrong, therefore his Attorney must know of it, and could prove it. Why did they not call Mr. HOLMES for this purpose? If he could have proved anything like what is insinuated, depend upon it he would have been brought here to do so. Why the Defendant should have ever gone to Wapping, or shown any interest in the ORTON family, Heaven only knows; I don't. Yet different motives may be imagined. That he and ARTHUR ORTON were in some way associated together in Australia seems indisputable. There is even reasonable ground for believing that he knew the Defendant was coming home to claim his estates. We have, of course, that Mr. MELLOR who says he never heard of ALFRED SMITH or ARTHUR ORTON.

The DEFENDANT: MILLER.

Dr. KENEALY: Well, MELLOR or MILLER; I don't care what it is. (Laughter.) Are you perfectly sure, Gentlemen, ARTHUR ORTON did not know what ROGER TICHBORNE was going home to England for? Are you sure he had no pull on ROGER TICHBORNE from which this man could never escape? Are you certain he was not cognisant of follies, or even vices and crimes, that ROGER TICHBORNE had either taken a part in, or been privy to, and that it would be very inconvenient for ROGER TICHBORNE to be made known in England. If that be so, I well understand ORTON saying, "I will expect you to provide for my brothers and sisters. You are now going to recover the possession of vast property. Here am I, a vagabond and a wanderer, bound down to a circle from which I cannot escape. I have abjured my family for years, but still have a little human nature left, and wish to see them provided for." There is nothing unreasonable in that; and if you believe that it might have been so, you will see that it is possible to account in this way for his ill-fated visit to Wapping, out of which so much has been made. That, or something analagous to it, may have been influencing the mind of the Defendant when he went there. The whole life of ROGER TICHBORNE, remember, is secretive. Would that secretiveness not be increased a thousandfold if there was anything in his relations with ARTHUR ORTON that might make him shrink from bringing them before the public? And can you imagine any greater hold one man could have over another than if such a state of things existed? "You wish," ORTON might have said, "to bury the whole of your life here in oblivion. You wish to go home, and take your place among the gentlemen of Hampshire. Well, you may do so; but you know what you and I have done together, and I will have my pay and hush money from you, and unless you are prepared to have the whole of your life shown up to the public, you must take care of my family." Turn that over in your mind, Gentlemen, and you may see a reason why he went to Wapping, and why he went to Wapping before he went to any other place in England. He would naturally be anxious to settle with them soon to prevent his own ruin; for, probably, one of the first inquiries ARTHUR would have made if he wrote to his relatives would be, "Have you seen Sir ROGER TICHBORNE, and has he made terms with you?" There are other motives that might have influenced him in making his visit to Wapping. The life these men were leading in Australia was one of wild adventure. Suppose in some wild foray this man's life was saved by ARTHUR ORTON. Would not that be a motive for his visiting Wapping, and showing gratitude to the ORTON Family? I am obliged to seek for a motive for this man—artful and clever conspirator as he is supposed to be. When asked why he went to Wapping, he never ventured to suggest a single reason. A crafty man would have had specious reasons ready on his tongue.

The LORD CHIEF JUSTICE: He did give a reason. He said he wanted to see if ARTHUR ORTON had arrived before him.

Dr. KENEALY: That is a reason that would only be given by a man with no more brains than that tumbler. It is no reason at all. (Laughter.) You may be sure of this, Gentlemen, that any man capable of concocting such a plot as this is alleged to be would not have made any such miserable and weak excuse. There is another thing to which I wish to refer in connection with the ORTON theory, and that is that, although in 1853 and 1854 daguerreotypes were common things, easily procurable for small sums of money, we have never been favoured with one of ARTHUR ORTON. The probability is that the first thing he would do when he knew he was going abroad would be to go and get his likeness taken. If we had CHARLES ORTON or these two women here, we might ascertain if he did so or not. If we had had his likeness we would have been able to see whether or not he was the beastly slobbering fellow so many of the Wapping Witnesses said he was. Miniatures of his Father and Mother, and photographs taken from these, have been produced; but I would have preferred to see a daguerreotype of the real man. Then, although these miniatures of his parents were produced, it was never explained from whose custody they came, but they were simply put into the hands of Witnesses, and asked if they were like old Mr. and Mrs. ORTON.

Mr. TAYLOR (Juryman): They said they were very faithful likenesses.

Dr. KENEALY: They did say so, and you can quote stronger language against me if you please; but still I say it would have been better if they had been proved. And now, Gentlemen, I ask you whether it is to be wondered that this man showed himself suspicious? Why, even when he arrived at New York he found himself denounced in newspaper paragraphs, and the very moment he landed in England he found himself surrounded by Detectives. Is there any doubt that STEPHENS and JONES were spies sent home in the same ship with him? STEPHENS, by some inscrutable means, induced him to take his card and assume his name, and write a letter in his name.

The LORD CHIEF JUSTICE: It was only by accident that they sailed together. ROGER TICHBORNE had intended to come home in a fast French ship, but, having accidentally missed it, he took passage in a slow English one.

Dr. KENEALY: That last circumstance makes for me. STEPHENS gave out that he was an American reporter coming to England to attend the Fenian Trials; and, if his story had been true, one would have expected him to travel by the fast vessel.

The LORD CHIEF JUSTICE: You forget that the slow vessel was bound for England and the fast one to France.

Dr. KENEALY: Well, my lord, it is clear that whoever STEPHENS was he exercised a curious influence over the Defendant. He says that the Defendant gave him a wild and romantic account of his life.

The FOREMAN: What proof have you that STEPHENS exercised any influence over the Defendant?

Dr. KENEALY: The very fact that the Defendant took STEPHENS's name is to my mind an indication of his strong influence.

The LORD CHIEF JUSTICE: If you wanted to take another name you would select the first that came to hand. STEPHENS had given the Defendant his card, but what influence does that show? The Defendant may have had some influence over the card, but the card had none over him. (Laughter.)

Dr. KENEALY: However it happened, he came in the same vessel as these two men.

The LORD CHIEF JUSTICE: Who sent them?

Dr. KENEALY: I don't pretend to be able to say.

The LORD CHIEF JUSTICE: STEPHENS said he was coming over to report the Fenian Cases.

Dr. KENEALY: The fact that a man who pretended he was coming over to chronicle the glorious deeds of the Fenians for a New York paper should choose a slow sailing ship strengthens me in the opinion that he was in reality a spy. Then JONES wormed out of the Defendant some of the details of his life, and wrote them down. Does not that look like as if he was a spy? Is it not a wonderful thing that we have never heard anything more of these two men? I am connecting the visit to Wapping and its immediate discovery and communication to the other side to Mr. STEPHENS, for there is a reasonable suspicion that he was tracked to Wapping the very night he went there, because his visit seems to have been discovered in a very short time indeed.

The LORD CHIEF JUSTICE: Is that so?

Dr. KENEALY: I think the evidence of either Mrs. JACKSON or Mrs. FAIRHEAD shows that she was visited by WHICHER, or someone else, a very few days after the Defendant had been there.

Mr. Justice LUSH: She says it was about six weeks afterwards that WHICHER came.

Dr. KENEALY: My impression is that she afterwards admitted that it was a shorter period; and I argue from that fact that he was tracked on the night of his arrival. I don't think I am wrong in saying JONES and STEPHENS were employed to watch his movements. When on the top of all this the Defendant found how his old and trusted friend GOSFORD acted to him, it is surely not to be wondered that there was a fund of suspicion awakened in him which exists to the present moment, and justifies him in entertaining suspicion about Mrs. JURY and Mrs. TREDGETT. A great many of my observations have been based on the idea that ARTHUR ORTON is dead; and yet it may happen that he is alive, and by some mysterious influences does not appear. He is a man who has led a wild and turbulent and lawless life. He is a man who, in the course of his existence, you may fairly presume has violated the law. One of my Witnesses connected him with a gang of persons who were supposed to have murdered a woman, and another said he had something or other to do with the murder of "Ballarat HARRY," and indicated a desire to see him for the obvious purpose of making him pay the penalty of his crime. That might well account for ARTHUR ORTON not daring to trust himself within the meshes of the law. He might well say to himself, "What is this man to me? If he had got possession of his estates he would have been a good milch cow, and I could have drained him; but it seems he is still as far off as ever, and, instead of having a prospect of the estates, he seems to have a certainty of Newgate. Why on earth should I risk my liberty for his sake?" I can well understand that mode of reasoning, particularly in a ruffian of that kind. There are chivalric men who would, under any circumstances of danger to themselves, come forward to help him. But such heroic sentiments find no place in the disposition of a ruffian like ORTON; and therefore it may well be true ARTHUR ORTON is still alive, and pursuing his career in the boundless tracks of the Australian bush. I could not but admire the easy courage of Mr. HAWKINS when he said, "Why not produce ARTHUR ORTON?" Why not? If ARTHUR ORTON is the man I say he is, he is not likely to show himself in England. Gentlemen, in support of the view I have been putting before you, that the Prosecution and the Family are well acquainted with all that is passing between the Defendant and the sisters, I call your atten-

tion to the celebrated letter addressed from Wagga-Wagga, and dated June 3, 1866. The letter, which is signed "ARTHUR ORTON," commences, "My dear and beloved sister," and goes on to say that "My friend STEPHENS is starting for England. He has promised to find you out, and let me know all about you." Gentlemen, how came ARTHUR ORTON to write that letter, and to announce his arrival in England on that morning? Can any of you solve that mystery? Why, it is insoluble if this man is ARTHUR ORTON. ARTHUR ORTON had no more feeling for his family than that inkstand, and that is manifested by his long silence. If ARTHUR ORTON could get ROGER TICHBORNE to support them, it would be nothing out of his way or against his interests. One can understand that; but ARTHUR ORTON, coming home to England as an impostor to claim vast estates, must let these silly women know all about himself, in order that his imposture may be talked about and exposed, one cannot understand. He must write a letter signed ARTHUR ORTON, saying that STEPHENS will call upon you, and then deliver it himself.

Mr. Justice LUSH: It does not say that he is coming home.

Dr. KENEALY: But he says STEPHENS is coming home, and he is STEPHENS. And STEPHENS, who is ARTHUR ORTON himself, goes and hands over the letter to the sister.

The LORD CHIEF JUSTICE: He sends it to her.

Dr. KENEALY: He went to inquire after them, and it will be for the Jury by-and-bye to say whether at that time he intended to see her?

The LORD CHIEF JUSTICE: Yes; but he never saw them.

Dr. KENEALY: The Defendant writes a letter in England dated Wagga-Wagga, signs it ARTHUR ORTON, and takes it himself to ARTHUR ORTON'S sister. This is simply folly. If he were ARTHUR ORTON, the moment he handed the letter to his sister she would say, "What nonsense is this?" That letter seems to me to indicate that ARTHUR ORTON had put a pressure upon him to give his relations money.

The LORD CHIEF JUSTICE: But he did not give them money till twelve or eighteen months after.

Dr. KENEALY: If that is not the reason I cannot give one. I cannot solve the unsolvable. It seems to me pure lunacy. It is wholly inconsistent with the notion that he is ARTHUR ORTON. It is consistent with the idea that pressure was put on him by ARTHUR ORTON, and so he wrote in his name and disguised his hand. I did not, however, allude to this letter to explain it, but to show that the other side was in communication with one of the ORTON Sisters, because it was only through them that the Prosecution could have any knowledge of that letter. There is another letter to Mrs. JURY. What earthly good sending that could do to the Defendant I am at a loss to conceive. That and his visit to Wapping seem to me to have been raving folly. Then, again, he is asked by the Attorney-General if he remembers going to Wapping, and, if so, why he denied it; when he replies, "Perhaps I did not choose to mention it." I call particular attention to those words. The secretiveness of ROGER TICHBORNE is constantly breaking out, and of this we see evidence in what transpired with reference to the Wapping evidence. I say we cannot rely upon his account of what then transpired; but there are evidently some reasons which he did not choose to assign for his going there, and which may suggest themselves to your mind.

But I must again ask, and in sober seriousness, is it absolutely incumbent upon me to clear up *all* the mysteries and follies of this gentleman's life? I feel that if I were called upon to clear up my own I could not do so. I cannot really tell you why he bought the Metropolitan Hotel for £10,000; I cannot divine why he made the Wagga-Wagga Will, or why he willed so much to HOLMES; I cannot surmise why he gave the portraits of his wife and child to the ORTONS, or why he gave them money. I have asked himself and he does not know. I cannot tell you why he said "that he was going back to Wagga-Wagga; and that he thought of having a large place on the lagoon and making a fine place of it." I cannot tell you why this descendant of ancient lineage became a butcher. I wish I could. But seeing all these things as well as you do, I nevertheless say that you must find him to be ROGER TICHBORNE. The evidence is too strong for you. You cannot get over it. You cannot, and you will not, conspire with the Family or with the Crown. People say that your verdict is already prescribed for you. But it cannot be so. *I* for one do not believe it. I have seen and heard many things since this Trial began; but, as the Bishop said when he read *Gulliver's Travels*, "there are *some* things in it which I cannot believe." So there are things here which I cannot wholly credit. His accusers are those who have his estates. Bear this in mind. It is a fact: and it is one of mighty gravity! They have them. I suppose they would like to keep them. They have left him nothing but poverty and Newgate. These are a poor inheritance for the man of £25,000 a year. No one, says CICERO, should prey upon the folly of others. I agree with the Roman. Yet have not these Prosecutors enjoyed and preyed upon the folly of my wretched Client? He has been a fool, let us rob him; he has been reckless, let us betray him; a drunkard, let us despoil him; a seducer, let us decry him; a wanderer, let us waylay him; he married beneath him, let us scout him as a traitor.

These are probably their views, and are the reasonings by which they seek to lull conscience. Yet ever and anon, methinks I hear in terrible tones, that go through my very heart: "CAIN! CAIN! WHERE IS THY BROTHER?"

[The Court adjourned a few minutes before four.]

TICHBORNE LETTER.

34, Bessborough-street, S.W., Dec. 17, 1873.

DEAR MADAM,—Many thanks for your letters, and the P.O.O. that you inclosed towards my Defence, for 20s., for which please accept my sincere thanks. I think the evidence of the man LANE would have been most valuable, had he been examined. It is now too late. We have the evidence of several Witnesses, who deposed to the same fact. Mr. ONSLOW is not in town. I have forwarded your letter on to him at Ropley. As regards the man LUIE, I don't think any friend of mine had anything to do with coaching him in his dreadful lies. I must acknowledge that I was never so deceived in my life, unfortunately for me. Mr. WHALLEY came and read the man's statement to me. I must certainly say, that biassed my mind in the man's favour to a great extent; and that what LUIE called a recognition was in fact only a test. I remembered that the Steward of the 'Osprey' spoke Spanish, so when WHALLEY brought the man in, I said, "Como esta," to which he replied.—Yours truly,

R. C. D. TICHBORNE.

CHARGE AGAINST JEAN LUIE AT BOW-STREET.

THE following, which was published in the newspapers about this time, was not calculated to help the Defendant's Case very much:—

At Bow-street Police-Court, on Saturday morning, JEAN LUIE, *alias* LUNDGREN, *alias* PETERSEN, *alias* GRUNDLUND, was charged before Sir THOMAS HENRY, who sat specially to hear the Case, with "being a liberated Convict at large on licence, neglecting and failing to comply with the conditions of the licence by not reporting himself as required according to the law," and also to answer the charge of "committing wilful and corrupt perjury," as a Witness in the TICHBORNE Trial.

The Prisoner was placed in the dock by REDSTALL, the Gaoler, and gave his name as "JEAN LUIE."

Mr. POLLARD, Treasury Solicitor, in opening the proceedings, said: I attend here, Sir THOMAS, to charge the Prisoner with being at large against the conditions of a licence which he received on the 25th of March of the present year. The Prisoner, as you are aware, by the public press, has made himself notorious in the Trial of the Case of "The Queen v. CASTRO," now being tried in the Court of Queen's Bench at Westminster. He then stated, as he has before you to-day, that his name is JEAN LUIE. He was asked the history of his life, partly in examination-in-chief and partly in cross-examination. He stated that he was born in Denmark in the year 1825, and joined the 'Osprey' as Steward. He also stated that he arrived at London Bridge last June, and in a coffee-shop near there he, for the first time in his life, heard that there was a person calling himself Sir ROGER TICHBORNE, who was laying claim to the Tichborne Estates, stating that he belonged to the 'Bella,' and wanted to know where Sir ROGER could be found. On the following morning he took an omnibus and went to the Marble Arch, and then found himself at the Victoria Station. He next took a train to Brighton, and returned the same night, sleeping at a coffee-shop in the Vauxhall Bridge-road. On the following morning he went to Bessborough-gardens, and said that he wanted to see Sir ROGER TICHBORNE. He gave no name, and was referred to Poets'-corner, where Mr. HENDRIKS had his office. He there made a statement in the presence of Mr. WHALLEY, M.P., after which he was sent to the Claimant's residence. Immediately upon his entering the house, 34, Bessborough-gardens, the recognition on the part of himself and the Defendant claiming to be Sir ROGER TICHBORNE was instant, the Claimant addressing him in Spanish, "Como està, LUIE?" He knew him by the voice and conversed with him. He was asked in cross-examination the various particulars of his life. He began by stating that in 1854 he was on board the 'Osprey,' stationed at Rio, where he first saw a person of the name of BROWN, now calling himself Captain BROWN, and another man. He then stated that having lived on board the 'Osprey' some time, it afterwards sailed for Melbourne, that they crossed the line somewhere about the month of April, and that shortly afterwards, off the coast of Brazil, they picked up a whaleboat containing in it six men, some of them being in a very exhausted condition, one of the six being paralysed, who had to be lifted out of the boat; this man, he said, was afterwards called ROGERS, for he knew no other and better name for him. The vessel

having picked up the six men, went on its course, and arrived in Melbourne in 1854. Everybody then, he said, including the Captain, deserted the ship, and left her high and dry, and went off to the diggings. He next described how, on board the 'Osprey,' it had fallen to his lot to nurse, dress, and wash the Claimant, and in doing so he noticed that he had marks upon his hip, but had no tattoo-marks about him. He was particularly careful about washing the Claimant, as one of the Prisoner's fingers was crooked from an accident he had met with. In July of that year (1854) he went to Ballarat.

Sir THOMAS HENRY: Need you state all this?

Mr. POLLARD: Yes. I think it necessary, Sir THOMAS, as it will prove to the Defendant's Counsel that his statement is totally false, as we have found it, which accounts for his now being before you. In May, 1855, he went to Sydney and to various places, and at Callao he kept a boarding house. He then joined another ship, and went on a voyage to Trieste, and afterwards served on the 'Ohio,' and went to Halifax in 1860. He remained on board the 'Ohio' for several months. In 1864 he joined the 'Albert' steamer, and sailed for Melbourne, where he joined another vessel. In 1867 he arrived at Stockholm, in the Baltic, and then went back to New York, and remained from that time at various places in the United States till 1871. In 1873 his wife abandoned him, and in the month of May he left Chicago and landed at Antwerp the first week in June last. At first he said Antwerp—afterwards Ostend. The circumstances which led to his being brought here are the following: Prior to November of the present year LUIE was photographed, and his portrait consequently appeared in all the shop-windows. Two young men—Clerks in a shipbroker's office—passing through Moorgate-street, saw LUIE's photograph, and immediately recognised him as a man who, on the 29th March of the present year—four days after he had been released on a ticket-of-leave—had called at the office of a shipbroker and endeavoured to obtain a sum of £20 to buy a chronometer. He represented himself as the captain of a ship, and nearly succeeded in getting the money, and in answer to a telegram which was sent it was stated that no such person as Captain SORRENSON, which name he assumed, was known. The two young men who had identified the portrait of LUIE came to the Court of Queen's Bench last week just as the Court was rising, and had an opportunity of recognising the Prisoner. On the following Thursday he was committed for Contempt of Court on the evidence I have now detailed to you of the discovery of LUIE and his antecedents. From that time up to the present we have never failed to receive from day to day further information about him; and various Witnesses were called during the present week, who stated that the man who is now before you was formerly a Clerk in a Shipbroker's office (Messrs. JOHN LUNDGREN and Co.), in the town of Hull. From 1856 to 1861 he was employed in the neighbourhood of Bristol as a Water Clerk, and went by the name of CHARLES LUNDGREN. In 1862 he was entrusted with a bank post bill, which he appropriated. He was given into custody, and tried at the Bristol Assizes in October of that year, and upon being convicted was sentenced to three years' penal servitude. In April, 1865, a portion of his sentence was remitted, and he was liberated on a licence. On the following October he was found at Newcastle-on-Tyne, under the names of PETERSEN and GRUNDLUND, where he also committed fraud, and was again taken into custody. He was tried at the Newcastle Assizes, and sentenced to six months from the adjourned sessions of 1866. After having served his time he went to Cardiff, where he was again convicted of fraud, and, his former conviction being proved against him, he was sentenced to seven years' penal servitude, which would expire in October, 1874. In consequence, however, of his good conduct, eighteen months have been remitted, and in March of this year he was set at liberty on a licence, the terms of which are that he should report himself within forty-eight hours of his arrival in any town; but at Folkestone, where he travelled on his way to Belgium, he never so reported himself. In addition to this offence, within four days of his release he was suspected of various other frauds, and in July of the present year he called upon Messrs. WINDSOR, SON, and GROOM, and under the name of Captain STROM he endeavoured to obtain money. On the 4th of July, under another name, he endeavoured to obtain money from Messrs. CORDY, of Crosby-square. He swore on the Trial that he only arrived at Ostend in July. He truly did arrive at Ostend, but on the 4th of July he was within the jurisdiction of this Court. The facts of his life having become known, the Court ordered that LUIE should be committed to Holloway Prison on a charge of Contempt of Court, in having committed perjury, and directed the Solicitors of the Treasury to take charge of the prosecution for perjury. He (Mr. POLLARD) would call before Sir THOMAS, Inspector CLARK, who was present during the whole of the cross-examination, and he would state one or two facts, and amongst them that the prisoner had never gone by any other name than JEAN LUIE. He would then call one of the Warders of the Chatham Convict Prison, who would prove that LUIE was there in 1868, up to March of the present year, and was then discharged on a licence. Next he would ask the Magistrate to remand the prisoner for a few days, to know what further steps would be taken in the Prosecution.

Inspector GEORGE CLARK, Chief Inspector, Scotland-yard, having been sworn, deposed: I was present on the 14th and 15th October of the present year at the Trial of the Case "The QUEEN v. CASTRO," at Westminster. The Prisoner was called as a Witness.

Mr. POLLARD: What name did he give?

WITNESS: JEAN LUIE.

Sir THOMAS HENRY: And he was sworn before he was examined?

WITNESS: Yes, your Worship.

Sir THOMAS HENRY: How is it spelt?

Mr. POLLARD (spelling): L-U-I-E.

Mr. LAYARD (the Clerk): The name of LUNDGREN is on the sheet, sir.

Mr. POLLARD: That would be as from his licence, he being charged as a Convict. (To the Witness): You heard him say that he had never gone by any other name?—Yes.

Mr. POLLARD: And had never been in any trouble?—Yes.

Mr. POLLARD: You heard him say that at various times prior to 1873 he had been engaged on various steamers on the American rivers?—Yes.

Mr. POLLARD: And that he did not arrive in England until July; and that he had been living from that time with a Mr. PULLEYN, at 12, Churchyard-row, Newington-butts?

WITNESS: Yes, sir.

Mr. POLLARD: As a fact, I may ask you, have you made inquiries of the police of the district, and do you find that the Prisoner has never reported himself as the holder of a licence to the police of that district?

WITNESS: I find that he has not.

JAMES CRANSTONE: I am a Warder of the Chatham Convict Prison.

Mr. POLLARD: Do you know the Prisoner?

WITNESS: I do, sir. He was a Convict in that Prison.

Mr. POLLARD: In what name?

WITNESS: JOHN LUNDGREN.

Mr. POLLARD: Was he discharged on licence on the 25th March last?

WITNESS: Yes.

Mr. POLLARD: Having a period of about eighteen months of his sentence to serve?

WITNESS: Yes.

Sir THOMAS HENRY (to the Prisoner): Do you wish to ask any question?—The PRISONER (sullenly): No.

Mr. POLLARD then said that having given sufficient evidence to justify a remand, he would ask that that course might be adopted, and that Thursday next would be a convenient day if it suited Sir THOMAS HENRY.

Sir THOMAS HENRY: Remand the Prisoner, then, until next Thursday.

The Chief Warder of Holloway Prison wished to know, with reference to the Writ of *habeas corpus*, if the Prisoner would be recommitted to his custody.

Sir THOMAS HENRY: No. The Prisoner would be committed under remand to the House of Detention, Middlesex, and he would endorse the writ that the Prisoner was out of the custody of the Holloway Prison Officer.

The accused was then removed.

JEAN LUIE AT BOW STREET.

At Bow-street, a little before noon on Tuesday, JEAN LUIE, *alias* CHARLES or JOHN LUNDGREN, was again placed at the bar before Sir THOMAS HENRY, charged with failing to comply with the terms of the licence upon which he was liberated from Prison on ticket-of-leave.

Mr. POLLARD, from the office of the Treasury Solicitors, stated that the Secretary of State had directed the removal of the Prisoner to a Convict Prison, and had accordingly signed a revocation of the licence granted to him for good conduct. Instructions in the meanwhile would be immediately laid before Counsel respecting the charge of Perjury which could be brought against LUIE. This, however, would occupy a few days.

Sir THOMAS HENRY: The Prisoner can be brought up at any time to answer the charge. Let the revocation be read.

Mr. GRANVILLE LAYARD, the Clerk taking the notes of the Case, read the Document, which was as follows: "Order of revocation of licence to a Convict made under the statutes 16 and 17 VIC., c. 99, s. 9, and 27 and 28 VIC., c. 47, sec. 9.—Whitehall, 15th day of December, 1873. Whereas, her Majesty was graciously pleased to grant, on the 28th day of February, 1873, to JOHN or CHARLES LUNDGREN, who was convicted of obtaining money by false pretences at the Quarter Sessions holden at Swansea, for the County of Glamorgan, on the 13th day of October, 1867, and was then sentenced to be kept in penal servitude for a term of seven years, her Royal licence to be at large during the remaining portion of his said term of penal servitude, unless it should please her Majesty sooner to revoke or alter such licence. Her Majesty is now pleased to revoke the said licence so granted to the said JOHN or CHARLES LUNDGREN as aforesaid, and doth hereby revoke the said licence.—Given under my hand and seal (Signed) ROBERT LOWE."

Sir THOMAS HENRY (to the Prisoner): You understand that your licence has been revoked?

LUIE: Yes, sir.

Sir THOMAS HENRY: Have you any statement you wish to make?

LUIE: Yes, sir.

Sir THOMAS HENRY: Let it be taken down.

LUIE: All I have to say is that I am sorry for what has happened. It would not have happened if I had not been encouraged and made up to do what I have done.

Sir THOMAS HENRY: Is that all you wish to say?

LUIE: Nothing else.

Sir THOMAS HENRY: You wish to say no more than that you have been encouraged and made up to do what you have done?

LUIE: That is all I wish to say for the present.

Sir THOMAS HENRY: Very well. Then it is now my duty to commit you to the Convict Prison at Pentonville to undergo the remainder of your sentence, but you must understand that you may be brought here, according to the statement of Mr. POLLARD, of the Treasury Solicitors' Office, to answer the charge of perjury.

LUIE, who was very quiet throughout the proceedings, was then removed.

Upon this statement, the 'Daily News' of Dec. 17th, 1873, comments as follows:—

COMMENT OF THE 'DAILY NEWS.'

A very serious assertion was made yesterday by the person calling himself JEAN LUIE, when he was brought up at Bow-street Police-court. In answer to a question from Sir THOMAS HENRY, asking him whether he had any statement to make before being sent back to prison to undergo the remainder of his sentence, LUIE or LUNDGREN answered in this wise: "All I have to say is

CHARLES FOX.

that I am sorry for what has happened. It would not have happened if I had not been encouraged and made up to do what I have done." We hasten to say that, without further knowledge, we can place no more reliance on this assertion than on the circumstantial account of LUIE'S adventures in the 'Osprey,' which was introduced into the Trial of the "Claimant." The character of the man has been declared; his evidence as affecting the TICHBORNE Case has been given up even by the Defence in the present Prosecution; he, his antecedents, and his future are alike of very trifling concern to the public. But such a statement as that we have quoted is calculated to throw suspicion on a number of persons who may be quite innocent; and it is to be hoped that it will not remain unanswered. In plain language, it amounts to a charge of conspiracy, of the most disgraceful kind that could possibly be committed; and the reply to such a charge ought to be easy. The circumstances of the Case are very extraordinary. We need not repeat LUIE'S story of his being Steward on board the 'Osprey,' where, he said, he nursed ROGER TICHBORNE for three months; nor need we say anything about his assertion in the Witness-box that the "Claimant" had recognised him on meeting him, and greeted him with the memorable "Como esta, LUIE?" It is enough to point out that, in the words of Dr. KENEALY, a special ambassador was sent to America to test the truth of LUIE'S story, and that the greatest care was taken with his evidence. Apparently no confirmation of LUIE'S story came from America; but he was put into the Witness-box, and there recited the simple narrative of his adventures, which have now ended in his re-committal to prison. The man has told abundant lies; perhaps this is another lie; but as it accuses someone or other of inciting him to bear false testimony, it might be well if all that is known of his history with regard to the TICHBORNE Case were made public.

ONE HUNDRED AND FORTY-FOURTH DAY.—THURSDAY, DECEMBER 18TH, 1873.

Mr. HAWKINS: Your lordship will remember that some question was raised about these portraits of Mr. ORTON and Mrs. GEORGE ORTON. My lord, they were produced by Mr. JOHN HOLMES—if you will ask the question of Mr. DAVIS (the Associate of the Court of Common Pleas who has charge of the documents).

The LORD CHIEF JUSTICE: That is so, Mr. DAVIS?

Mr. DAVIS: It is, my lord.

Dr. KENEALY then resumed his address to the Jury.—Gentlemen—We are now told that the portraits were produced by Mr. JOHN HOLMES. Where he got them does not appear, and the fact furnishes an additional reason why the Prosecution ought to put Mr. HOLMES into the box. It would have been most material to have known something about how he got the portraits. I need not say it was not from the Defendant. He must have received them from somebody, but the Prosecution for their own purposes think it expedient to leave this matter in doubt before you. Certainly, if they wanted to satisfy me that they could not venture to call any person of the kind, this last incident is conclusive.

Mr. HAWKINS: That they may contradict, my lord. These portraits were not produced at our request. Mr. Serjeant BALLANTINE produced them from Mr. HOLMES.

Mr. Justice LUSH: Oh! is that so?

Dr. KENEALY: All this is perfectly irregular. Mr. HAWKINS is giving evidence as to what took place at the former Trial. Mr. HAWKINS called upon Mr. HOLMES to produce these portraits, and later in the day Mr. Serjeant BALLANTINE produced them.

Mr. HAWKINS: I called for them, and Serjeant BALLANTINE produced them. They were handed over to Serjeant BALLANTINE, who was then acting for the Defendant.

Dr. KENEALY: Nothing can be more irregular.

The LORD CHIEF JUSTICE: How was it, Mr. DAVIS?

Mr. DAVIS: Mr. HOLMES was called upon to produce them by Mr. HAWKINS, and Mr. Serjeant BALLANTINE produced them at a later period of the day.

The LORD CHIEF JUSTICE: Then you called for them, Mr. HAWKINS?

Mr. HAWKINS: Yes, my lord; but they were produced by Mr. Serjeant BALLANTINE, acting for the Defendant.

Dr. KENEALY: Was that statement, Gentlemen, that they were produced by Mr. HOLMES perfectly ingenuous? I will leave that to you. Now, it appears Mr. HAWKINS called for them. Gentlemen, these little devices ought to put us on our guard. Nothing could be less frank than the insinuation made.

Mr. TAYLOR (a Juror): But were they not recognised by your own Witnesses?

Dr. KENEALY: I really do not know who identified them. My object is to show that the other side knew—probably from their friend HOLMES, who, at that time, was the Defendant's Attorney—that *he* had got the ORTON portraits. *Why* did HOLMES communicate that to them? Was it loyal to his Client for him to do so? Of that you must judge. My observations have nothing to do with the identity as the Juror supposes. Evidence given after a cursory glance is of very little value.

Gentlemen, when I was interrupted yesterday, as it seems to be my fate to be in this Case, I was speaking of the Defendant's visit to Wapping, and of the absurd, irrational, and frenzied statement he made as to it, namely, that he went to see whether ARTHUR ORTON had arrived. Mr. HAWKINS asked you to pay attention to the Defendant's explanations, but I ask you to pay no heed to them whatever. If you do you will be walking in a labyrinth, and in a totally wrong light. You will exercise your own judgment with respect to them. When no rational explanation can be given of his conduct the proper conclusion is that no rational conclusion can be arrived at in reference to it. They were the deeds of a person whose brain was not sound. If a thing is irrational it is the act of an irrational man. It would be a perversion of terms to regard an irrational act as the act of a rational person. Even assuming him to be ORTON, the act is utterly inconsistent with the purpose for which he came to England. Assume that he is TICHBORNE, the wild, hare-brained young man, and the act is consistent. Assume that he is the cool, calculating, cunning ORTON, and it is utterly inconsistent with his fraudulent design.

I call your attention to the evidence of that woman FAIRHEAD; and, whether she is a wilfully false Witness, or acted under the influence of others, I will not speculate; but I put her before you as a Witness whom you should not believe. Permit me to read over that portion of the cross-examination which refers to the Wapping visit; it is at page 1565:—

"Now you started, I understand, from Sydney to come to Panama, and from Panama to New York, and from New York to England?—Yes.

"And landed on Christmas day, 1866?—Yes.

"You have told me that after you had been at FORD'S Hotel and Beaumont-street, you went down to Wapping?—Yes.

"What time was it you landed and got to FORD'S Hotel? What time did you get into the docks?—Between 3 and 4, I think.

"Did you go straight to FORD'S?—Straight to FORD'S.

"Who went with you?—To FORD'S Hotel?

"Yes.—My wife and child, and servant.

"Your wife and child, and servant. Does that mean BOGLE?—A female servant.

"Your female servant?—BOGLE followed afterwards.

"That is ROSINA MCARTHUR?—Yes.

"Then you got your dinner and went to Beaumont-street, and then down to Wapping?—Yes.

"What time did you get down to Wapping?—It must have been between 9 and 10.

"Were you not at 'The Globe' as early as 7?—No.

"Kept by Mrs. FAIRHEAD; no, Mrs. JACKSON?—I do not know who it was kept by.

"You say you got there later?—A great deal later—about 9 o'clock: between 8 and 9.

"I put it to you that you were there as early as 7?—It could not have been; it was past 7 before we had our tea.

"Did you go alone?—I did.

"The LORD CHIEF JUSTICE: To Wapping?—Yes, my lord.

"The SOLICITOR-GENERAL: How were you dressed?—How was I dressed?

"Yes.—I really do not know.

"It was cold and in the evening: Were you muffled up?—The probability is I was. I have no doubt I was. I do not remember.

"Now, was the first question you asked the person you saw there, Whether she could give you any information about the ORTONS?—Yes, and where they had gone to. I think I told you previously the address I had been to, and there was nobody living in the house.

"I took you to the first person that you saw. If there was no one in the house, they did not see you——

"Mr. Serjeant BALLANTINE: You asked about the first person he saw. There was no one in the house when he went there.

"The SOLICITOR-GENERAL: There was no one in the house; it was an empty house?—Entirely shut up.

"The house you went to was a public-house. Who was the first person who saw you? Did you learn that old Mr. ORTON was dead? Did the woman who you asked tell you so?—I do not remember whether she did or not.

"Did you say you knew of the death of the old lady?—No; I certainly did not say that, because I did not know anything about it.

"You did not say so?—No.

"Mrs. FAIRHEAD was the person I suggest you said that to?—I do not know what the name was.

"Did she tell you that MARY ANN ORTON married a Mr. TREDGETT, and that Mr. TREDGETT had died within about nine months of the marriage?—I believe she did say that.

"Did she also tell you that Mrs. JURY, another sister of ORTON'S, was at the time living with Mrs. TREDGETT, her sister?—I do not remember that part of it.

"You will not deny it was not?—I do not remember.

"Did you then ask if she could give you Mrs. JURY'S address?—No; Mrs. TREDGETT'S address.

"Mrs. JURY'S address is what I ask?—No.

"Did she say she could obtain the address for you close by, and send to an old servant of the ORTON family?—No; I think to the best of my recollection she gave it to me then and there.

"Did she say she could send for it and send to an old servant of the ORTON family who was living close by?—I think not.

"Did she, however, send out for it?—I do not remember her sending out, she gave me the address. I cannot say whether she sent out or not.

"While you were there, and this conversation was going on, did she mention the name of CHARLES ORTON?—No.

"And did you say 'I do not want to see him?'—I did not.

"That you swear?—I swear I never heard the name of CHARLES ORTON mentioned.

"You swear you never heard the name of CHARLES ORTON mentioned, and that you did not say you did not want to see him?—I did not.

That you swear?—I swear I never heard the name of CHARLES ORTON mentioned.

"You swear you never heard the name of CHARLES ORTON mentioned, and that you did not say you did not want to see him?—No.

"'Mr. JURY'S address will do. I do not want to see him. Mrs. JURY'S address will do.' Did you ask if a Mr. CRONIN still kept the grocer's shop opposite?—I did not. I never heard the name before—that is until I heard it since.

"I quite understand what you mean. You mean you had not heard it before the time I am speaking of?—No.

"Did she say, 'Well, CRONIN failed and has gone away'?—She did not.

"Did you say, 'I am sorry to hear CRONIN has failed'?—No.

"Did you then ask after a Mr. JOHN WARWICK?—I did not.

"A buteher who lived close by?—I did not.

"Do you mean that neither CRONIN'S name or WARWICK'S name was mentioned by her to you?—No, they were not.

"Or while you were there?—Nor while I was there.

"The LORD CHIEF JUSTICE: Neither by you to her, or her to you, nor while you were there?—No, my lord.

"The SOLICITOR-GENERAL: She did not tell you that WARWICK was dead, in answer to your question, and had left a wife and family, and you said you were sorry for it?—Certainly not.

"Did you ask if the son of a Mr. WRIGHT, ship-chandler, living next door to ORTON, had come back from sea?—I did not; neither do I know such a person.

"Did she say to you, 'I am afraid he has never been heard of'—WRIGHT, that is the son of the ship-chandler?—She did not.

"Nor anything of the sort?—Nor anything approaching.

"Did she say (I am speaking now of Mrs. FAIRHEAD) 'Why, you must be one of the ORTONS'?—She did not.

"And did you say to her, 'I am not one of the ORTONS, but I am a friend of theirs'?—No such conversation passed.

"Thereupon (I am putting it to you) were there two women there? One, I suggest to you, was Mrs. FAIRHEAD, and the other a Mrs. JACKSON. First of all, I will ask you were there two women there?—No; I only remember one person being there—a stout person.

"Do you mean to say there were not two who spoke to you?—No, there was only one who spoke to me.

"I ask you whether, after this had taken place, another woman who had been present during this conversation, and had heard it—the landlady herself of 'The Globe,' Mrs. JACKSON——

The LORD CHIEF JUSTICE: Mrs. FAIRHEAD, I thought you said.

"The SOLICITOR-GENERAL: Mrs. FAIRHEAD was the first. Was there another who was present the whole time, and heard the conversation as I have been putting it to you; whether she did not interfere—the landlady of 'The Globe' herself, Mrs. JACKSON—and say, 'You are an ORTON, you are like both the father and mother'?—She certainly did not.

Nor anything to that effect?—Nor anything to that effect. I do not remember seeing but the one female there.

"Did you say in answer, 'No, I am not; I am merely a friend of the ORTONS; I have come from a brother to assist Mrs. JURY?'—I did not.

"Did the first person, Mrs. FAIRHEAD, then say, 'Mrs. JURY'S daughter has gone out to join her uncle, and it has been reported to us that her uncle has allowed Mrs. JURY to draw £80 for her daughter's outfit'?—She did not.

"And did you say, 'Well, I hope she will get out safe'?—I did not, and no such conversation passed.

"Nothing like it?—Nothing like it.

"Nothing like it?—No.

"Do you recollect did she say after you had been talking some time about these people, 'Well, if you are not an ORTON, you seem to know Wapping well, at any rate'?—She did not.

"Did you say, 'I have been away from Wapping about 15 years'?—I did not say anything of the kind.

"How long do you think you were there?—In the house?

"Yes. You had some conversation with some person there?—From five to seven minutes.

"Were you not there nearly an hour?—Certainly not.

"Having a long conversation about Wapping, and the people of Wapping?—I was not there more than seven minutes.

"Was there anybody there besides you—I mean customers of the house—while you were there?—I never saw anyone at all in the house during the time I was there, only the female.

"Of course; except the person you spoke to. Did you know Mrs. JACKSON?—I did not.

Her name originally was FAIRHEAD?—I did not know her, and I do not know her now.

"Did you ever hear ARTHUR ORTON speak of a Mrs. JACKSON, a Miss FAIRHEAD, or a Mrs. FAIRHEAD?—I did not.

"Never?—Never.

"Now, I have put to you what I suggest passed. Tell me in your own way what you say did pass?—Well, I went down to the house when I had the address; it being shut up, I went into the first public-house that I could see, and inquired for the address of Miss ORTON, and they gave me the address. I remained there, I suppose, for five or seven minutes.

"What address did they give you?—They gave me some address. I do not know where it is now.

"Wrote it down for you?—Wrote it down, yes.

"You wrote it down?—No, they wrote it down.

"Miss ORTON, was it?—Miss MARY ANN ORTON.

"They wrote it down?—Yes.

"Was there more than one person?—Only one person.

"The person you saw wrote it down?—I do not know whether she wrote it herself; she gave it me written.

"And then you went away?—I went away. I went to the address that she gave me.

"And that is the beginning and end of the matter. I mean of the matter in the public-house?—Yes.

"You could hardly have taken even so long as you say. It was a very short business indeed?—Not a very long one—from five to seven minutes.

"Did you have any refreshment or anything there?—I believe I had a glass of something, I cannot say what.

"You stayed to finish your glass, and then went away?—Just so.

"That is the whole of it?—That is the whole of it.

"Do you remember breaking a decanter?—Breaking a decanter? I never had a decanter in my hand.

"We all of us may break decanters; I do not mean to imply that you had done it on purpose. You do not recollect breaking a decanter?

"Mr. Serjeant BALLANTINE: He says he did not do it.—I did not do it.

"The SOLICITOR-GENERAL: You say it was the first public-house you came to; did you notice it was 'The Globe'?—No, I did not know more than what you say.

"You took that from me; you did not know it was 'The Globe?'—No, I did not know more than what you say.

"You took that from me; you did not know it was 'The Globe'?—No; I did not know it was 'The Globe.' I heard since; I heard it from Mr. WHICHER.

"I am speaking of your knowledge at the time. You did not observe it was 'The Globe'?—No, I did not, I did not look at the name.

"You are quite sure there was only one person there?—I am quite sure that I saw only one person there.

"I only speak of that. And that you had no conversation with more than one person?—I had no conversation with more than one person.

"That there were not two women, one of whom spoke to you for some time, and then another intervened, and they both continued the conversation?—No, there was only one.

"That is not so?—That is not so.

"This was the first visit to Wapping, was it?—Yes.

"And your last?—And my last.

"You have no knowledge of Wapping at all?—I have not.

"Never been there before? Before that time?—No.

"Before that time?—I was never there before that time.

"Do you happen to know how you stumbled on the public-house that you did stumble upon?—No. It appeared to me to be the only one that was near the place.

"Would it be strange for you to find that it was close to old Mr. ORTON'S house?—Why, it was old Mr. ORTON'S house. I went to the address I had; that would not appear at all strange.

"That would not appear strange?—No.

"Mr. Serjeant BALLANTINE: Do not surprise him.

"The SOLICITOR-GENERAL: This does not surprise him. We will pass from this.

"It would not surprise you to find that it was near ORTON'S house?—I did not expect. I did find it was near.

"Did you find that the address which had been given of Miss ORTON was what had been old GEORGE ORTON'S house?—Yes.

"You found that afterwards?—I did not know that. I found it afterwards. I believe I knew it at the time.

"You knew that from ARTHUR?—I did so.

"You went, I think, from there to No. 13, Paynton-terrace, East India-road?—Yes, I believe I did.

"Did you mention at all in your conversation PHŒBE JURY? Did you know the name of PHŒBE JURY at that time?—No.

"ARTHUR did not tell you the name of PHŒBE JURY?—No, I did not know there was such a name.

"You did not mention that?—No; I am not aware there is such a name now, and I thought I had got the evidence of all the girls, too.

"The LORD CHIEF JUSTICE: What is that?—I said I had never heard the name before, my lord.

"Mr. Serjeant BALLANTINE: And he is not aware there is a PHŒBE now.

"The SOLICITOR-GENERAL: He is not aware of it, and he thinks I have got all the evidence of the names of the JURYS."

Gentlemen, such is the account which the Defendant gives of this visit. I need not comment on the absurdity of his going to a public-house close to where he had lived if he had been ARTHUR ORTON. He would have been known to every one, and all his designs would have been frustrated. He might have gone, owing to the instincts of blood reviving, to his father's home; but would he have gone to a tavern and exposed himself to the risk of instant detection and exposure? No one can believe that ORTON would have done so. If you contrast the evidence of the Defendant as to the visit to the public-house with that given by the two women—Mrs. FAIRHEAD and Mrs. JACKSON—you will come to the conclusion that the Defendant's version of it is the correct one. He distinctly denies that he asked for anyone but Mrs. JURY. He did not ask for CRONIN, or WARWICK the butcher, or any other neighbour. Only imagine the absurdity of ORTON asking after these people with this design in his head! Why, these things refute themselves by their very absurdity. They are clear and palpable falsehoods. Then he is asked whether she told him he was an ORTON, and whether he did say No; he was a friend of theirs. Why, there cannot be a single word of truth in it. This man, who was supposed to be buying and cajoling Witnesses to his side, would he not, if all this were true, have taken steps to secure these people? He knew very well that their evidence, if true, would be damnatory to his Case; but he knew, too, they could say nothing against him that was not false, and he treated falsehood with contempt. One's common sense gets sick, almost, at such suggestions as were made by these persons. Only imagine his remaining in the house after being told that he was an ORTON—after being told, in effect, that he

was discovered, and telling them, as they said he did, that he had been away fourteen or fifteen years—telling them, in fact, everything that would tend to unravel his plot. "Were you there about an hour?" he is asked, and he replied that he was there only about seven minutes. But it was necessary to their story that the women should say he was there nearly an hour. He was asked what did pass, and he said he went down to the house of which he had the address, but finding it empty he turned into the first public-house he met, and asked for the address of Miss ORTON, which the woman of the house wrote down for him. Next he was asked did he break a decanter, and he denied having done so. Gentlemen, we know that a great judge of human nature says that a lie with a circumstance gives it the appearance of truth. The Defendant, on several occasions, gave the same version of this visit or adventure; and, at the time of his cross-examination, you will remember that he knew he was to be treated as an impostor and the son of a Wapping butcher. He knew it when in New York, from what he read in the papers there, before he came to England. Ask yourself, is it possible that ORTON, knowing that, would have had the conversation with those women to which they swore? It is past belief that ORTON would have done so. It would be absolute ruin to him and to his Case to have done so. They say that he left the counter, and asked, looking out, "Do the CRONINS keep that shop opposite still?" Can anything be more transparently false on the face of it than this is? Why, he might as well have said at once, "I am ARTHUR ORTON. I am about to commit a great fraud—to personate a dead baronet, deceive his family, and rob them of their estates." You cannot for a moment credit that a man contemplating such a gigantic fraud would have thus exposed himself. It is absolutely incredible. FAIRHEAD stated that the gentleman who called at her house shook his head when he heard that MARY ANN ORTON kept a lodging-house, and did not seem to like the idea. ARTHUR ORTON, the bushranger and vagabond, all at once changing into a fine gentleman, and not liking the idea of his sister keeping a lodging-house! I wonder what Mrs. FAIRHEAD's idea of human credulity must be? Again, she states she said to him, "You are the ORTON that went away some years ago." He said, "No; I am a friend of his." She spots him, and then she wants you to believe that he clenched the discovery by turning round and asking, "Are the SCHOTTLERS living here yet?" She said, according to her story, "You are very like the ORTONS; you know Wapping well." To which she says he replied, "I was in Wapping twelve years ago." Why there is not a man of sense who hears this who would not laugh at anybody who would believe the tale. The conversation seems quite infantile in its simplicity—this long delightful family conversation about the ORTONS, at no part of which the stranger appeared to be surprised. She then added this nice little circumstance: "The gentleman asked me to take a glass of wine, and I took down a bottle, the neck of which had been mended. The neck remained in my hand, and the bottle and wine fell to the ground." She was then visited by a Detective, whose name we may surmise, three or four weeks after the Defendant's visit, and portraits, she said, were shown to her. My object was to show that this man was watched and spied upon from the moment of his landing by the Detectives of the Family who were longing to take him to their arms. WHICHER, she states, came to her five or six times, and she frequently saw him walking about in the neighbourhood. I asked her whether she expected to get anything from the TICHBORNE Family, and she said she did not. Will any one of you believe this story? She asked me, "Why should she?" and I say Why should she not—one who is almost a principal Witness in the Case? Pressed on the point, she said she only expected her expenses, but being no lawyer she did not know what they would be. She was, Gentlemen, an adroit and clever woman, and I ask you to be cautious how you accept her evidence. You remember how distressed she appeared to be towards the close of her evidence; how she asked to be relieved, and was allowed to leave the box. I submit to you that no reliance can be placed on the woman's testimony in consequence of what I say is the incredible account she gave of the Defendant's visit, and of her self-evident, clever, cunning evasions of my questions. If ORTON had had no notion that he was suspected by the Family, or that he would be watched and traced, it is possible that such a visit, and even such conversation might have taken place; but, on the assumption that the Defendant is ORTON, he never would have spoken as this woman asks you to believe he did. Then you have the evidence of Mrs. MARY ANNE JACKSON, who tells us that one of the first things the Defendant said when he came to 'The Globe' that Christmas night was that old Mrs. ORTON was dead. How he could have obtained that knowledge I am at a loss to imagine.

The LORD CHIEF JUSTICE: Mr. RICHARDSON, in his letter to Wagga-Wagga, stated the fact.*

Dr. KENEALY: The fact had escaped my recollection, my lord. That accounts, of course, for his knowledge of it. This Witness, Mrs. JACKSON, puts into the Defendant's mouth a knowledge of the entire locality which ROGER TICHBORNE could not have had, and which it would have been sheer madness on the part of ORTON, contemplating a fraud, to have evinced. She makes him ask about a number of old neighbours and express concern at their death or present circumstances. One can scarcely contain one's indignation at persons of that class coming into this Court and endeavouring to persuade any twelve men who have their reason that such things have occurred. Gentlemen, it was assumed throughout their examination by the Counsel for the Prosecution that this man was an impostor, for they were constantly asked such questions as this: "Did he ask for his other sister?" I say that that is not the principle on which a Criminal Prosecution should be conducted; but from the beginning of this Case to the present moment, this assumption of guilt has never been laid aside. And I should not wonder if it continued even to the end.* You remember how the scene was put before you by Mr. HAWKINS. The Witness said to this gentleman, "Are you an ORTON?" to which, as she says, he replied, "No? I am a friend of the family." She added, "I should almost have thought you were an ORTON." "Why?" he inquired. "You are so like the family," she answered, "so like Mr. and Mrs. ORTON." Will any man out of Bedlam believe such a story? She then goes on to say, "If you heard this gentleman speak, you heard old Mr. ORTON speak; he had a gruff way of speaking." I direct your attention to the sameness of the language of these Witnesses in speaking of this gruffness. On Mrs. JACKSON remarking that he knew the neighbourhood very well, he replied, she says, "I was here sixteen years ago." Then she uses that phrase, "I came here simply to speak the truth," and, gentlemen, if you have been accustomed to attend courts of justice, you will probably think the phrase suspicious. Here is a thing which I must ask you to believe as unfounded and incredible:

"He went to the window and looked out at CRONIN'S shop, left the bar, and after going into the tap-room, went through into the back, and on coming back again he said, 'The house has not altered a bit.'"

Upon this the Prosecution go through the farce of bringing the model of the house before you to strengthen the statement, as if a model could make that true which is in itself a lie. There is one other thing to which I must call your attention, because I am going to ask you to believe that it is as true as the rest of this woman's and her mother's tale. Observe the contradiction between them. The mother says, with reference to this interview with WHICHER, first that it might be six weeks or two months after the Defendant was there, and then comes down to three weeks; whilst the daughter says it was months after—six or seven months at the least. Was that a mistake, or had some one told her that the man was watched to 'The Globe' publichouse, and that she must endeavour to dissipate the idea to which my cross-examination gave rise? It was after the mother was examined, and after the Court had adjourned half an hour, the daughter was called, and she comes in to meet the theory that the Family had someone watching this man. But I submit, that from the early intimation they had of this meeting, I am justified in saying that they had someone tracking his footsteps. The Witness goes on to say that she told him old GEORGE ORTON was dead, and that "he seemed as if it was interesting to him to hear what I was able to tell him." This shows that it was not a mistake she made with regard to the dates when she was visited by the Detective. She said, "It was some time after he was there—it must have been at the fall of the year, but I cannot remember the exact date." I told you that I would call attention to a matter in connection with the name of FERGUSSON, and that is the evidence of JOHN BROMLEY, which is on a par with the evidence given by the women, and is, as I submit, perfectly untrue. Mrs. JACKSON was asked did she know a person named FERGUSSON, and she said she did. Then came BROMLEY, who said he saw the Defendant on board the 'Cella' on Christmas Day, and that he asked him after a Pilot of the name of FERGUSSON, to which he replied that he knew three of that name. He also said that the Defendant came to him a second time, and said the man he wanted was the Pilot of the Dundee steamer. Can you believe that ARTHUR ORTON would act in this way: furnishing evidence—he the clear-headed, cunning, designing impostor—against himself every step he took. Might he not as well have said to the Witness, "I am ARTHUR ORTON and I have come home to pass for a young English baronet?"

The LORD CHIEF JUSTICE: *Do you say the evidence is false?*

Dr. KENEALY: *I say it is incredible.*

The LORD CHIEF JUSTICE: *Therefore false!!!*

Dr. KENEALY: The Jury will ask themselves whether they think it within the range of possibility that ARTHUR ORTON would have so acted. Then hear what this Witness says—they always overdo it, they are not satisfied with once—"He asked me a second time, did I know FEROUSSON, and I told him that he was a Pilot on the Dundee boats." Gentlemen, I must ask you to dismiss the story of this man and those two women, JACKSON and FAIRHEAD, from your minds as incredible from beginning to end.

* TICHBORNE'S Letter to Mr. RICHARDSON appears *Trial*, Vol. I., page 99. The brother's evidence upon it appears Vol. I., page 281. *No such statement as that mentioned by the Lord Chief Justice appears in the evidence.* Dr. KENEALY'S answer shows that he did not suspect the L. C. J. of falsehood.

* This observation was prophetic. Mr. HAWKINS in his Summing-up, adhered to his former line; and the whole of the Lord Chief Justice's address to the Jury, from first to last, is based altogether on the supposition of Guilt: and never once admits even the idea of Innocence. And every fact and argument is put forth, to "fit in" to this fallacy.

The LORD CHIEF JUSTICE: *No; not from beginning to end.* The Defendant admits that he was at Wapping on Christmas night at ORTON'S house, and at 'The Globe' public-house.

Dr. KENEALY: Of course, I do not say that he was not; but I say that everything stated against him by those Witnesses which would tend to identify him with ARTHUR ORTON is incredible, and ought not, therefore, to be relied or acted on.

The LORD CHIEF JUSTICE: *The Jury must go a step further, and say it is false.*

Dr. KENEALY: So long as they do not believe it, I do not care on what ground they do not believe it. (A laugh.) Then we have the evidence of Mrs. PARDON, who introduces the card of Mr. W. H. STEPHENS. The word "Australia" is written on that card, in whose handwriting I know not. [*Having examined the card,* Dr. KENEALY *proceeded.*] It resembles the Defendant's handwriting, but I do not think it is his. He said in his cross-examination that it was like his, but he could not say it was. It is like and unlike.

The LORD CHIEF JUSTICE: *Can you doubt that it is his?*

Dr. KENEALY: I do not know what to say about it.

The LORD CHIEF JUSTICE: He did not deny that it was his.

Mr. Justice LUSH: *And further on he said it was his.*

Dr. KENEALY: Yes; but the Jury will exercise their own judgment with respect to it. For my own part the acknowledgment does not influence me in the least. (A laugh.) We know that at first he admitted the PITTENDREIGH Forgeries to be in his handwriting. He expressly denied that Mrs. PARDON had charged him with being an ORTON because he bore such a resemblance to the family. He is asked, "Did you say you were a reporter from New York going to Ireland to report on the Fenians?" and he replied, "I may have said that." "Did she say, 'You must be an ORTON, you are so much like the family;' and did you reply, 'No; I am only a friend of ARTHUR ORTON, the richest man in Australia'?—No; nothing like it." Then he was asked did he show this Mrs. PARDON a photograph of a woman and child in a locket, and say they were likenesses of ARTHUR ORTON'S wife and child, and he positively denied having done so, adding, "What is true I will acknowledge, but not what is not true." I need not again refer to the evidence of Mrs. PARDON on this matter, with regard to which I say that the Defendant's denial is true, and the circumstances she speaks of not likely to have taken place. Bear in mind that, according to the evidence of these two persons—FAIRHEAD and JACKSON—the Defendant, if he was ORTON, at that time must have known that it was perfect madness for him to go often into the East-end of London. It must have occurred to him, "I had the narrowest escape last night that a man ever had. It is necessary for the success of my imposture that I should keep my presence in England a profound secret, and I won't go near anybody, otherwise I shall have had my journey for nothing, and have concocted my fraud to no purpose. My relatives have already branded me as an impostor, and will have no difficulty in tracing me." But he went again—this cool, crafty ARTHUR ORTON did this mad act. Mrs. PARDON says he went to her, and made inquiries as to the position of MARY ANNE ORTON, telling her that he was a Mr. STEPHENS, who had been sent out by an Australian paper to report upon the Fenians. He told her also, she says, he had promised ARTHUR ORTON that he would call upon his sister MARY ANNE ORTON to render her pecuniary assistance if she needed it. As if, Gentlemen—if he had been the real ARTHUR ORTON—he could not have sent BOGLE or young BUTTS, whom he had brought over as secretary, to obtain the address of MARY ANNE.

The LORD CHIEF JUSTICE: If ROGER TICHBORNE wanted to assist the ORTON family he might have done so as you suggest by sending a representative. I do not see why it was necessary for him to go to Wapping himself.

Dr. KENEALY: Neither do I, but I am suggesting that he acted with his usual recklessness. The distinction I wish to draw is that ORTON would never have done this. If the Defendant is ROGER TICHBORNE he never would have surmised that any act of his in connection with the ORTON family would establish him as one of them. The real ORTON, who did not want to let anyone know that he had returned to England, would have employed a messenger to get his sister's address. The Witness says he described ORTON as the wealthiest man in Australia, but why he should utter this gratuitous lie I cannot tell. He then shows her a locket containing the portraits of ARTHUR'S wife and child. Now, the Defendant's wife and child were in England with him, and he must have known that when the fight came on they would be identified as the persons whose photographs he had exhibited as ORTON'S wife and child. Is this credible? Can you believe it? Why, even ROGER TICHBORNE, with all his recklessness, would not have done such an insane thing as this? The woman, however, swears he did; and I must ask you to believe that she is not telling the truth in that particular. Why he should have told her so many gratuitous lies about the Australian paper and the Fenians I can't conceive.

Mr. Justice LUSH: He admits that what he says is true about his having told her he was going to Ireland.*

Dr. KENEALY: I do not think he gave a full admission of it. He said something about it I know, but my contention has been all along that he will say "Yes" to anything in order to avoid taxing his memory or being obliged to think. The Witness went on to say that he asked her how Mr. ORTON was, and she informed him that he had died suddenly as he sat in his chair; but she fancied that her interrogator had heard it before.

The LORD CHIEF JUSTICE: That he was dead or that he had died suddenly?

Dr. KENEALY: I think she connects the two. The Witness thinks he did not remember PHOEBE JURY having gone abroad. I don't know that I have to say anything further on this evidence, but I ask you to class it with that of the four Witnesses I have alluded to, merely requesting you to bear in mind the observations I have made upon it. The concoction of this conspiracy must have required the greatest art. Yet the man who was artful enough to cover himself with cuts and scars to make himself like ROGER TICHBORNE, to eradicate tattoo marks said to be on ARTHUR ORTON, and to transform himself in every way—the man who was capable of carrying out a design of this kind, it is suggested, in one moment did all he could to overthrow the fabric he was engaged in constructing. If you believe the story of this woman, he revealed himself unmistakably to her when he knew he was watched, and that every movement of his excited suspicion in a numerous, powerful, and wealthy family. He must have known that to obtain the title of baronet and estates such as these, would entail one of the most long and arduous legal fights ever known, and that it would be impossible for him, without using the most extraordinary precaution, to escape detection—at all events on some points. And he must have known that detection meant not only the destruction of his hopes, but the destruction of himself also, in depriving him of his personal liberty for years. He must have known and considered all that, and yet, for no apparent reason—merely to confer unbounded favours all of a sudden on persons whose existence he had hitherto ignored and despised—he is supposed to have adopted the course upon which I have been commenting. Gentlemen, ORTON dared not go into the wolf's mouth by going to Wapping. He dared present himself anywhere but there. If he did go, however, it would be in the most cautious manner. He would go determined to keep his *incognito* and pick up what information he could which would be useful to him afterwards, but letting nothing concerning himself be known. I ask you unhesitatingly to reject the theory of the Prosecution on this point as extravagant and unworthy of serious consideration. He went to Alresford and lived amongst the oldest inhabitants, feeling sure that he would be recognised as TICHBORNE, and he went to Wapping, believing that he could not be mistaken for anyone else; but when there was a cry against him, and many people were saying he was ARTHUR ORTON, he went fearlessly all over the country, and exposed himself to the most searching criticism. He went boldly to Alresford, Southampton and other places, where ROGER TICHBORNE was known; he went to theatres and music-halls, and showed himself to thousands of people. These were not the acts of an impostor. This it is which has convinced so many people that he is ROGER TICHBORNE, and has induced them to come forward and say so, and I submit to you that there is a mighty vigour at the bottom of the conception, and it will weigh in your minds if ever you should come to ask yourselves—though I should think every one has answered it in his own conscience before this—"Is this man ORTON or not?" You have heard all the places to which he did go, but there are two places to which the Defendant did not go for any special purpose, and this you will see is a strong argument in favour of his innocence. The first place is Paris. He went there and stayed ten days, but all the time his visit lasted he was suffering from illness—whether the result of sea sickness or not I don't know. There was nothing, however, to prevent him taking another journey. With his mother, who was familiar with the place, and with *Galignani* in his hand, he could have gone a second time, and obtained a thorough knowledge of the city. But he does not condescend to do this. The very same thought or feeling which made him go to Wapping, and made him feel sure that no improper inference would be drawn from the circumstance—namely, the consciousness that he was TICHBORNE—would also actuate him with regard to Paris. It will be said by Mr. HAWKINS, "Why, if he was ROGER TICHBORNE, did he not know the early incidents and scenes of his life?" In answer to that I say, "Why, if he is ARTHUR ORTON, did he not make himself acquainted with those incidents and scenes?" He would have had no more difficulty in informing his mind with regard to Paris than I should have in walking out of this hall. He does not do it, however, and I look upon that as a most powerful argument in favour of his innocence. In the same way with regard to his military life in Ireland. Under the auspices of Lady TICHBORNE he would have been able to enter the best society in Dublin, and by that means would have had it in his power to obtain valuable information. He would have visited all the public buildings, especially barracks. He could have bought photographs of Cahir Castle, Dublin Castle, and Portobello; and moreover he could have visited those places and learnt all about them. He does not condescend to do so, and what is the reason given on the other side? "Oh," they say, "he did not dare to go there, because he would have been recognised at once." But will that reason bear examination? He is said to have been all over

* *He does not admit it.* The words were: "And did you say, 'Only a friend, a reporter for one of the Australian papers: and my mission is to go to Ireland and report upon the Fenians.' W. H. STEPHENS, you know, was a Fenian reporter?—*Yes, I might have said that.*" (Page 1349.)

England. Then are the Irish people more to be feared than the English? Are they so penetrating and the English so dull? Were they more likely to recognise him as an impostor, if he were such? It is absurd to suppose so. The real reason, I submit, was because he believed he had only to show himself to conquer. He never imagined for one moment that he would have to meet the powerful combination which has brought about the issues we are now trying. He had a sort of proud consciousness of his moral strength and of the force of his own identity. Perhaps he did not visit these places because he would not again cross the sea. He does not appear to have been lucky at sea. After his last journey to Paris he was ill for eight or nine days, and he may have determined never again to cross either the English or the Irish Channel. I hope these arguments will be satisfactory to you. If he could not have got Lady TICHBORNE to Ireland, he had the Rev. Father GUY, who has been presented to you as one of his co-conspirators. I need not tell you that a Roman Catholic clergyman from England going to Ireland with ROGER TICHBORNE, the Claimant of the Tichborne Estates, would have had ready ingress to good society, and to persons from whom he could have learnt that there was no Curragh of Kildare in the time of TICHBORNE as an encampment for the Carabineers. There is another argument I want to impress upon you with regard to the ORTON theory. According to the specimens we have of ORTON'S epistles, it is evident he was a very ignorant and bad writer, and he must have been conscious of the fact. Perhaps there is no subject on which illiterate writers are more sensitive than the nature of their handwriting, and there are many who, although they can write their names, prefer to make a mark. Well, I submit to you the same sensitiveness would have been exhibited by the Defendant if he were ARTHUR ORTON, of whose writing we have no record later than 1854. If the Defendant had been ARTHUR ORTON he would have engaged a secretary to do all his writing for him. What does this man do? Directly he comes back he writes shoals of letters in every direction, until at last his correspondence becomes so interminable that he has a number written out for him, to which he merely signs his name. He has written volumes of letters, and has scattered them all over England amongst friends and foes. This is not what ARTHUR ORTON would have done.

Gentlemen, you must always expect in men who eventually arrive at a gigantic size like this man the existence of mighty passions. It frequently happens that they are men guilty of the wildest excesses and follies. Let anyone look at the statue of FOX in Bloomsbury-square, and compare it with the Defendant. Let any man consider the wild, almost mad, life of FOX from the time he was seventeen or eighteen years of age until his death, and compare it with the life of this man. FOX was a man of great ability and intellect, a great orator, and an accomplished scholar, and yet he was guilty of the most absurd follies during the whole of his career, and was perpetually involved in debt, and difficulties, and misery in consequence of his extravagant madness.

The LORD CHIEF JUSTICE: Madness?

Dr. KENEALY: Madness, my lord. You may call it crackedness if you like. (Laughter.)

The LORD CHIEF JUSTICE: I will give you an instance of a lean man whose eccentricities were somewhat similiar—SHERIDAN. He had quite as many peculiarities as FOX. He was extravagant.

Dr. KENEALY: I have no doubt he was wild.

The LORD CHIEF JUSTICE: He was a man of great genius, and as lean as a herring. (A laugh.)

Dr. KENEALY: I am not going to rest my argument on FOX alone. In the House of Commons, in that place where he brought his great talents into action, no man could be wiser than FOX, but as soon as he left that arena and went to his club hardly any man could be more foolish. He indulged himself in the wildest way—he was a man of overpowering passions, which carried him headlong without him offering any opposition. I say the passions which have carried this Defendant away are analogous to those of CHARLES JAMES FOX. There is another man to whom I will refer, one of those big-made men, whose name stands with colossal size in history—MIRABEAU, a man of rank equal to TICHBORNE—a big, powerful man, a man of great talents, a man who swayed the destinies of his country, and who, if he had lived, might have swayed them for the rest of his life. But into what a career did not his passions lead him! His father was obliged to get *lettres de cachet* to lock him up and keep him out of harm's way. Yet nobody says that MIRABEAU was deficient in prudence or mental ability, though when we contemplate his career we do it with pity. He was utterly irreclaimable in his father's lifetime, and after his death we find MIRABEAU wandering about the streets as a bookseller's hack. Hardly anything was too extravagant for him. I say that such characteristics frequently accompany big and powerful developments. DANTON, also a Frenchman, I may quote as another man of the same class.

The LORD CHIEF JUSTICE: How is it with giants—are they more given to excess than other men?

Dr. KENEALY: No, my lord, because they are always locked up in their caravans. (Laughter.)

The LORD CHIEF JUSTICE: We have several public men whose stature towers above that of other men around them, but I have never heard it said that they are remarkable for their excesses.

Dr. KENEALY: I am not speaking of living men, but only of those who have passed away.

A JUROR: There was JACOB OMNIUM.

Dr. KENEALY: He was not a big man. He was tall.

The LORD CHIEF JUSTICE: He was well-proportioned.

Mr. TAYLOR (Juror): He weighed 25 stone.

Dr. KENEALY: I was in his company once and I did not see in him anything but a tall man.

The LORD CHIEF JUSTICE: He was tall, and yet a man of the most perfect proportion.

Dr. KENEALY: These are three illustrations I have given you, and I still adhere to the notion that men who are big in that way, have a wild excess of passion, and are not to be judged of in proportion to their excess. Then there was O'CONNELL, who was famous, during the early part of life, for the indulgence of his passions. He has passed away from us so recently, however, that I will not dwell upon his name.

Mr. TAYLOR (Juror): There was ROBERT HALL—he was a fat man.

Dr. KENEALY: He was a short, dumpy man, I believe, and I am only talking of big men like FOX.

I shall now briefly call your attention to one of the points in the evidence of MARY ANN LODER. There is this extraordinary thing about her, that if she kept company with ARTHUR ORTON for anything like the time she says, it is singular that no one is called at this Trial who ever saw them together. I think I am correct in saying that.

The LORD CHIEF JUSTICE: ARTHUR ORTON'S letters prove the courtship.

Mr. Justice LUSH: Letter after letter, after he left England.

The LORD CHIEF JUSTICE: Your Client says that ARTHUR ORTON directed him to make inquiries about Miss LODER. If there had been no courtship between ARTHUR ORTON and Miss LODER would he have enquired about her, and would you find her name in his pocket-book?

Dr. KENEALY: I don't deny that ARTHUR ORTON may have known her.

The LORD CHIEF JUSTICE: You are impugning the statement that she kept company with him; but the answer to that is the correspondence in the first place, and, secondly, that the Defendant says that ARTHUR ORTON asked him, on his return to England, to inquire about MARY ANN LODER.

Dr. KENEALY: I don't impugn her testimony in its entirety. She may have walked out with him once or twice, but if she were what is called keeping company with him, some one, in all probability, would have seen them together.

The LORD CHIEF JUSTICE: In one of the letters ORTON speaks about her going out to him.

Dr. KENEALY: It may be that she walked out with him once or twice.

The LORD CHIEF JUSTICE: That cannot be unless you contend that the letters were not written by ARTHUR ORTON, because in one of them he speaks about her coming out to him.

A JUROR: ARTHUR ORTON'S letters prove the courtship.

Dr. KENEALY: I have my own theory about those letters (laughter), but it is now too late to broach that theory. Although the question was put, no one ever said they had seen them as lover and lover.*

Mr. Justice MELLOR: I remember a passage in the evidence to that effect.

The LORD CHIEF JUSTICE: You must take it as it stands.

Dr. KENEALY: I am told that I must now take it as it stands; and I say that it is one of the most singular things of this singular Case that there was no person who ever saw those two people together. That anything like a continued acquaintance, if it ever existed between them, could fail to be proved, I don't see.

A JUROR: Didn't you tell us yesterday that the connection was so close that she could not be mistaken, and that therefore her testimony must be false?

Dr. KENEALY: That is according to her own account, which I am now about to test. Gentlemen, a correspondence may have taken place between them, but there is not one Witness who ever saw them together. And, with regard to the correspondence, I will only remark that out of the letters which are put before you, only one I believe, or at the outside two, bears any postmark. Whatever hearsay you may have had given you on this matter, and whatever is mentioned concerning it in the letters, you must form your own judgment upon them. She may have been an acquaintance of ORTON'S, if you like, but there is no distinct evidence except her own, that she was being courted by him. Parts of her own testimony concerning her lover are not very clear, and she does not seem to have a very distinct recollection of him. She tells us what I must ask you to receive with some doubt. Miss LODER is called to describe certain personal peculiarities of ARTHUR ORTON, and she fails to do so. Her first acquaintance with him seems to be of a rather misty nature. She doesn't remember whether it was in 1851 or 1852, and then, in reply to other questions, she gives answers which do not seem to show a very clear idea about him. Then she tells us what I must ask you to receive with some hesitation, namely, that although she went to the funeral of Lady TICHBORNE with

* Namely, that the supposed ORTON letters were forgeries. This had not occurred to Dr. KENEALY in the earlier part of the Trial. It did, however, when it was too late; and he never afterwards doubted that they had been fabricated and made as like the Defendant's writing as the forger could.

WHICHER, yet she did not know what WHICHER was. With reference to the personal peculiarities of ARTHUR ORTON, she remembers nothing about his hands, their size or shape; and shows the same ignorance with reference to the size of his feet. Now, Gentlemen, do you think evidence of that sort is worth one straw? Ladies are generally observant of the feet of gentlemen they walk out with.

The LORD CHIEF JUSTICE: Is that so?

Dr. KENEALY: I have heard many ladies describe the feet of gentlemen with whom they are acquainted.

The LORD CHIEF JUSTICE: It may be so. I do not question your authority on the subject. (Laughter.)

Dr. KENEALY: Now, Gentlemen, observe the want of observation on the part of this sweetheart. You will remember that she remarked nothing as to his hands. You all saw the Defendant's thumb, and I should have thought that MARY ANN LODER would never have forgotten if ARTHUR ORTON had such a thumb. Then she did not know if his ears were pierced; they might have been but she had not noticed. He did not wear earrings, but he might have been pierced. It is a very curious thing that this woman, who said she was an old sweetheart of the Defendant, refused to see him. I should have thought that would afford her a fine opportunity for giving him a good sound rating for saying that he had forgotten her. It is clear that she knew very well that he was not ARTHUR ORTON, and therefore would not venture to go into his presence. Being asked, "Are you prepared to swear that ARTHUR ORTON was not pock-marked?" she replied, "No, but I am prepared to swear that I never saw any marks of small-pox." "I knew he had small-pox," she said, "but very slightly."

Mr. Justice LUSH: She added, "I must have seen it if it had been deeply marked."

Dr. KENEALY: Her evidence produces an impression that she could have had hardly any opportunities of seeing him; and if that be so, her testimony can be of no value. She was not able even to say whether or not his ears had been pierced. This want of observation on all these points leads to the impression that she could have had little opportunity of seeing the man at all, and this, to my mind, renders her testimony of very little value.

Mr. Justice MELLOR: I have found the passage you referred to. Miss COCKBURN is asked:

"Do you know Miss LODER?—Yes, as a neighbour.

"Did you know whether ORTON was keeping company with her?—I was told so; but I never saw them together."

Dr. KENEALY: I am much obliged to your lordship; but there are other Witnesses who said the same thing. FREDERICK CRONIN is another of their important Witnesses—one of "WHICHER'S flock." He is one of the numerous Witnesses who never saw ARTHUR ORTON after 1848. If the Defendant is ORTON, and he had that peculiarity about the thumb in 1848, which he has now, it must have been noticed by CRONIN; yet he says he never did notice it. He observed a remarkable movement about ORTON'S lower jaw he says. You, Gentlemen, have had plenty of opportunities of seeing this Defendant; yet you never saw this peculiarity. A Witness named Mrs. CHARLES SMITH, on the other hand, swears that ARTHUR ORTON'S lower jaw did not move. She was asked the question in connection with the twitching and the nervousness.

The LORD CHIEF JUSTICE: Are they speaking of the same time? ARTHUR ORTON suffered from St. Vitus's dance, but I understand that it was agreed that after he had been sent to sea he was very much better upon his return.

Dr. KENEALY: No date is named, but it must have been before he went on his sea voyage. It may have been when he was about 14 or 16 years of age. We have the fact, however, that she distinctly negatives the movement of the lower jaw to which Mr. F. CRONIN speaks.

The LORD CHIEF JUSTICE: There can be no doubt that ARTHUR ORTON suffered from St. Vitus's dance, and that it affected his eyes, nose, and mouth; but it appears that the voyage worked a remarkable change, and that when he returned he had got rid of the motion of the mouth and the slobbering.

Dr. KENEALY: She says her last conversation with him took place when he was about 16, and that must have been before he was cured of St. Vitus's dance.

The LORD CHIEF JUSTICE: She must be mistaken about that. He went away at the age of 14, that is in 1848, and he was away in 1849 and 1850.

Dr. KENEALY: Mr. FREDERICK CRONIN gives an extraordinary account of the reason why Mr. WHICHER accompanied him to the funeral of Lady TICHBORNE. He says he went with Miss LODER and Miss LAWS, adding, "and our escort, of course, WHICHER." There is a flippancy about that answer, Gentlemen, which cannot recommend it to you. Mr. JOHN STOCK, who followed Mr. CRONIN, produced the Parish Register of St. John's, Wapping, containing the names of the family of the ORTONS. It is only necessary for me to mention the names of the female members in that Register—ELIZABETH, MARGARET ANN, MARY ANN, and MATILDA. DONA CLARA HAYLEY says that ARTHUR ORTON told her during his stay at her house that one of his sisters was named ANNA, another MARIANA, another MARGARITA ANNA, and another ISABELLA. There is no ISABELLA in the Register.

The LORD CHIEF JUSTICE: "MARGARITA" is the same as MARGARET. There is no such name in Spanish as "MARY ANN." The name is not divided, and would be "MARIANA."

Dr. KENEALY: The third flower in Mr. WHICHER'S flock is Mrs. LAWS. She never spoke to ARTHUR ORTON after 1848, and she describes him as having small hands and being "pigeon-toed." I don't know what "ring-toed" means.

A JUROR: Turning the toes in.

Dr. KENEALY: Again, she says that all the ORTON girls and boys had clumsy feet, and ARTHUR among the rest. She took particular notice, she says, of the hands and feet, and ARTHUR had taper finger nails. Is it likely that such a "bullocky" lot as the ORTONS evidently were had what is peculiar to persons of high breeding? This Witness never spoke to ARTHUR ORTON after 1848. Mrs. WHITE, another of these Witnesses, only remembered him up to the age of 14. Another of Mr. WHICHER'S ladies, ANN COCKBURN, distinctly swore that ARTHUR ORTON was marked with small-pox, and that she never saw him wearing earrings. Counsel for the Prosecution confined their questions to the seeing earrings, as if they did not feel quite certain about the boring or piercing of the ears. Nearly all the Witnesses admitted that he had had an attack of small-pox. I believe there is plenty of evidence that he had two attacks, one before he went to sea, and another after his return.

Mr. Justice LUSH: Is that very unusual?

Dr. KENEALY: I understand it depends on the severity of the first attack. If the first attack is remarkably mild it may be followed by a severe one. The same Witness when asked whether ARTHUR ORTON'S hair was curly replied that it was rather straight. She also stated that he had lightish hair. Being asked whether he had large bony hands she replied, "I do not think he had." It is a curious fact that these Witnesses were not in a position to state anything distinctly, but all commenced their answers with "I do not think," or "I do not remember," or something of that kind.

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY resumed: Gentlemen, ANN COCKBURN is one of those persons who is asked whether she ever saw ORTON and LODER together, and she said, "Never." So that the attention of the Prosecution was distinctly drawn to the importance of the fact of establishing that matter if possible. ANN COCKBURN has had a great deal to do with WHICHER. So also has Mr. CHEW. You will remember that not one of our Witnesses was seen or influenced by any Detective. The only Detectives that have been traced to us are such Detectives as Lord RIVERS, Mr. WHALLEY, Mr. ONSLOW, Mr. BULPETT, Miss BRAINE, and others. CHEW is a man who swears that ARTHUR ORTON was in-kneed. He says that he never observed any peculiarity about the eyes of ARTHUR ORTON, and he also distinctly swears that he never saw ARTHUR ORTON with Miss LODER. He exhibits a kind of animus with reference to the Defendant's assertion about Lady RADCLIFFE, and represents himself as a sort of chivalric knight, coming forward in her behalf. But I don't think you will take much notice of that. He further says that the Defendant pretended to be ill one day when he came to the Court of Common Pleas to hear him cross-examined. He gives a remarkable description of the feet of ARTHUR ORTON, which is very different from the shape of the feet of this Defendant, and I assure you, Gentlemen, that throughout this Case I shall lay particular stress upon the feet and hands of ARTHUR ORTON when contrasted with those of the Defendant. Probably there is no more good and ample sign of gentle blood than the feet and hands of individuals. I shall direct your attention to the feet of the Defendant, and I shall say that from their high instep and peculiar formation they are of a particularly aristocratic kind, and that they cannot ever have been the feet of ARTHUR ORTON. Mr. CHEW described ARTHUR ORTON'S feet as "five over five"—a vulgar expression that boys used to make use of in those days; and it is evident that there was a horrid clumsiness about the feet.

The LORD CHIEF JUSTICE: I think the expression "five over five" applies to the knees. When the knees bend in, the legs and thighs form the figure 5.

The FOREMAN: No, my lord, I think not; it means five toes going over five.

The LORD CHIEF JUSTICE: I was wrong and Dr. KENEALY right.

Dr. KENEALY: Thank you, my lord. When this man's evidence was tested, it proved to amount to nothing. Being asked, "Will you swear that you ever talked to him for five minutes?" he replied, "I cannot say." "Will you swear that you ever spoke to him up to the age of 16?—No, I will not. Fourteen?—I will swear to 14. Have you spoken to him up to 14?—I believe I have. Will you swear that you ever spoke to him ten minutes in your life?—I never kept a diary." The Lord Chief Justice finally disposed of that Witness by saying, "I hardly know what you called this Witness for." Yet that is a person who was called upon to prove that this gentleman (pointing to the Defendant) is ARTHUR ORTON. The next Witness whom the Prosecution called was DICK WHITBREAD, whom I call a betting Witness. He gave a curious answer. Being asked, "Who is the Defendant?" he said, "ARTHUR ORTON; I will not swear that he is ARTHUR ORTON, but I will swear that he is the person who was christened and I knew as ARTHUR ORTON." That is an answer I don't understand.

Mr. HAWKINS: That Witness said expressly that he had no bet on this Trial.

Dr. KENEALY: When asked, "Have you no bets on the pre-

sent Trial?" he replied, "I think there is a pound or a new hat." Therefore Mr. HAWKINS is mistaken. He had bets on the last Trial, and if you find the Defendant guilty he will perhaps win twenty or thirty new hats.

The LORD CHIEF JUSTICE: Is that so?

Dr. KENEALY: On the last Trial he had 40 or 50 bets of new hats; but you will remember that those bets will be decided by the result of this Trial.

The LORD CHIEF JUSTICE: Not so; the bets on the last Trial were whether the Plaintiff won or lost, and therefore, as there was not a completed Trial, those who bet in favour of the present Defendant did not pay.

Dr. KENEALY: That would be if the bets were on the event; but if they were that he was not TICHBORNE, or that he was ORTON, they would be decided by the result of this Trial. Mr. COOPER-WYLD points out another answer with regard to the bets of this Witness—"I have 20 or 30 bets on this Case." But as usual when I mention a fact, if it be one of any importance, some one stands up like Jack-in-a-Box, and flatly contradicts me.

The LORD CHIEF JUSTICE: It has been contended that, there having been no verdict on the last Trial, all the bets are at an end.

Dr. KENEALY: If the Defendant were found guilty, that might revive them. The Witness said that at a pigeon-match in which he was engaged the Defendant turned round about thirty times to look at him. There is not a man of greater nerve anywhere than the Defendant has shown himself to be, and it seems hardly likely that he would turn round so many times, when engaged at a pigeon match, to look at the Witness.

A JURYMAN: I don't think the Witness meant he did so in the act of firing.

Dr. KENEALY: I don't know; but that is what he says, "every time he fired." Now, Gentlemen, one of the points of our Case is this: that ARTHUR ORTON was bitten by one of the Shetland ponies and that bite would leave an indelible mark. The pony would take his arm between its jaws and press it, we may suppose, firmly, and teeth-marks would be left on each side of the arm.

The LORD CHIEF JUSTICE: It depends on how it happened to catch him.

Dr. KENEALY: I presume it was a pony of ordinary sense. (Laughter.)

The LORD CHIEF JUSTICE: Both jaws might catch the inner, or they might both catch the outer side of the arm.

Dr. KENEALY: At all events there must be a double mark.

The LORD CHIEF JUSTICE: Certainly.

Dr. KENEALY: That is what I say.

Mr. TAYLOR (Juryman): Do you think you could get your arm into a pony's mouth? (Great laughter).

Dr. KENEALY: I would not like to try. (Laughter.) But I don't see why I should not be able to do so.

The JURYMAN: Oh, no; ponies don't open their mouths like mastiffs.

Dr. KENEALY: Well, I would have to be convinced of that.

The LORD CHIEF JUSTICE: One Witness swore that the pony bit the arm, and that he did something to it afterwards.

A JUROR: It was on the inside of the forearm.

The LORD CHIEF JUSTICE: It was probably not with the incisor, but with the under teeth.

Dr. KENEALY: I think it is perfectly clear that the bite left a double mark, and the Defendant has no such double mark. I am going to submit that this was a pony bite, and, if so, it would leave a mark of the incision. Now, Gentlemen, the Defendant had no such double mark. Our evidence is that it was a severe bite, but the present Defendant has no such thing. As to the pock-marks we are left in doubt and mystery. These men who knew ARTHUR ORTON so well decline to pledge their oaths as to the pock-marks. Our Case is that there were only three or four marks on ORTON, and their Witnesses must have been aware of that. WHITBREAD cannot swear that ARTHUR ORTON had never had the small-pox; he won't swear he never had earrings; he says he never noticed his hands. WHITING, the next Witness, was asked some questions by me about his having some brothers in Australia who might have come over; I think someone suggested that they might be valuable Witnesses. This Witness feeling the force of it, endeavoured to throw upon the Defendant an insinuation of having either by himself or his friend offered him money, and this, I say, destroys the effect of his evidence. He was asked, "Who on the other side offered you the compensation?—I don't say it was distinctly proposed—a certain sum of money was offered." This kind of answer, I say, was given for the purpose of conveying to your minds a false impression. Then he says, "They had written to me and applied to me, and on one occasion to find out what they would do, I put my own terms, and then went to Messrs. DOBINSON and GEARE." "Have you a letter from the Defendant or on his behalf?—No, a gentleman came on two or three occasions. I never knew his name." As if WHITING would have done this without knowing the name. Then he said he had been written to, but had not got the letter. Then I say to him again, "Can you bring us those letters?" Now hear the reply: "There was a meeting." Again I ask the question, and he replies, "I think I can find them; I will not be positive." Then he goes on to say that he told "them" what his terms would be, viz, £20 per day, and adds that if he dined with the Defendant daily he should require WHICHER to be at one elbow, and MACKENZIE at the other elbow of the Defendant in order that the latter might not treat him too kindly. Gentlemen, fancy what a pleasant dinner that would be with WHICHER at one elbow and MACKENZIE at the other (laughter). I challenged the production of those letters, and you may be perfectly certain that had they existed they would have been more valuable than bank-notes to Mr. HAWKINS. But the letters were not produced. The next Witness is a Mrs. EAST, and she is one of "WHICHER'S flock." Now, Mrs. EAST knows hardly anything whatever of ARTHUR ORTON. It appears that she won't venture to say that she ever spoke to him but once. A nice person to prove identity! On that occasion it was just after he came home from sea, and she said to him, "Good afternoon, ARTHUR, I am glad you are home again," or something of that kind. And then Mr. Serjeant PARRY, being perfectly astounded at such recognition as that in a Case of this magnitude, says, "Let me understand you clearly; did you never speak to him except on that occasion?" and she replies, "I can hardly think I ever spoke to him at any other time, except to say, 'Good morning,' or 'Good afternoon.'" Gentlemen, what do you think of the identity of the Defendant with ARTHUR ORTON depending upon such perfectly rotten testimony as this? Then she says, "At the Trial I recognized his (the Defendant's) voice." Here is a woman who has never heard ARTHUR ORTON speak for 20 years, and then only upon one occasion, put before you in this High Court, and says she recognised the voice of that gentleman (pointing to the Defendant). Why it is more like a farce than anything serious. She cannot tell whether ARTHUR ORTON'S ears were pierced or not—a thing which I should think a woman would have known. Then I asked her about the size of his hands and feet, and she replies, "I think it was remarked by us when he was very young that he had small hands and feet." Well, if she means by that when he was a baby, of course his hands and feet would be small, but that "Splay-foot" or "Bullocky ORTON" had small hands and feet when he was a grown youth I submit to you is mere nonsense. Then we have Mrs. HOWELL, who really proves nothing. She, as you know, is a very respectable lady indeed; and her first husband having been the owner of the 'Ocean,' she had some recollection of ARTHUR ORTON, but had never seen him since he was fourteen, and would not swear this was he. On cross-examination, this Witness was found to know nothing, as, indeed, most of the ORTON Witnesses knew nothing. She says she never talked with ORTON for five minutes before he went to sea, and when asked if she had talked with him for five minutes after he came back, she replied, "I don't recollect," and eventually she would not swear that she had ever seen ORTON after the latter was fourteen years of age. Mrs. CHURCH is a Witness who knew MARY ANN LODER, but never saw ARTHUR ORTON with her. She said ARTHUR ORTON never wore earrings, but she could not say whether his ears were pierced or not, and asked, "How should I know?" Now, it is not necessary to use a microscope to see whether people's ears are pierced. I see your ears, Gentlemen, and could tell if any of them were pierced.

The LORD CHIEF JUSTICE: Do you mean to say, Dr. KENEALY, that at this distance you can tell whether they have been pierced or not?

Dr. KENEALY: Yes, my lord. I can see them distinctly.

A JUROR: Well, I can't see yours.

Dr. KENEALY: Ah, sir, that is because you have not got such good eyes as I have. (A laugh.)

Mr. Justice LUSH: With regard to the infirmity of vision which you complain of in the Witnesses for the Prosecution, I must point out that it exists also to a very great extent amongst your own. I have been looking over their evidence, and I find that out of fifty-eight, forty say that they did not observe whether ORTON'S ears were pierced or not.

Dr. KENEALY: That may be so.

Mr. Justice LUSH: Some of your own Witnesses could not speak to the holes.

Dr. KENEALY: But a great number remembered the earrings.

A JUROR: Can you tell us, Dr. KENEALY, whether, for instance, the Foreman's ears have been pierced?

Dr. KENEALY: Yes, sir, I can. They have not.

The JUROR: But they have. (Great laughter.)

Dr. KENEALY: Perhaps they have closed up.

The JUROR: Well, that may have happened to other people.

Dr KENEALY: Gentlemen, the same Witness says, that she had never noticed his hands, but that she remembered his walk being "particular," and that his feet were of middling size. She further says his hair was darkish, although all the other Witnesses described it as light. WM. ALLEN is the next Witness on whom they rely, and he only knew him by sight. Mrs. SARAH GILL lived in the same street with the ORTONS, but says she never spoke to ARTHUR, and yet remembered his voice, though she had never seen him since he first went to sea. She really has no knowledge of him. She does not remember his hair or eyes, and says she never noticed his hands or his feet. Her testimony, I think you will agree, is not of much value. FRANCIS CRONIN is another of "WHICHER'S flock." His evidence is that he knew ARTHUR ORTON when they were boys together, but he cannot say he ever said more than "How do you do?" to him after his return from sea the first time. He seems to remember nothing whatever about him. He, however, insinuates that the Defendant showed that he recognized him when he first saw him at Croydon. He says the Defendant looked at him in driving past, and then turned his

horse round, and drove past him again. Possibly the Defendant did so, and for this reason—that when he saw a man on the road watching him, he might suspect him of being either a spy or a bailiff. If FRANCIS CRONIN, moreover, had known him at once I think he would have made some sign of recognition; but this he does not pretend to have done. ROBERT GOSCHEREN is one of the persons about whom the Defendant is said to have made those affectionate inquiries spoken to by Mrs. FAIRHEAD. He knew him as a boy, and will not swear he has spoken to him for twenty-five years; and yet he comes here to swear that he recognises him, and can even speak to his voice. How ridiculous is the idea of Witnesses pretending to remember the voice of a man whom they had not seen for twenty or thirty years, and in some cases not since he was a boy. On the other hand there are four special reasons why Mr. TICHBORNE'S voice should not be recognised by those who had not seen him since his youth—his enormous accumulation of fat, his use of ardent spirits, his loss of teeth, and the injury he had sustained to his nose. I am bound to go through all this evidence because I should never be able to excuse myself to myself if I omitted anything that anyone might hereafter think was material; but I do assure you that I am ashamed to comment upon such stuff. In addition to our old friend WHICHER having a conversation with GOSCHEREN, we find that he is talked to by our equally old friend Mr. BOWKER. Then we have RUSSELL DUNN, who knew ARTHUR ORTON as a child, and saw him after he came back the second time from sea, but did not associate with him, and still this Witness is called to swear to the person and to the voice of the Defendant. He is asked by me, while speaking of having seen him in 1847, the only period at which he can give anything like conclusive evidence with regard to ARTHUR ORTON, "Did you talk with him a dozen times after his return from sea?" and he said he could not say whether he had any conversation with him, adding, however, "I might say 'Good day' or 'Good morning,' the same as my neighbour would say." He says that he noticed nothing about him. You see, Gentlemen, all these Witnesses, when they are tested know nothing. He could not describe his hands or feet. He describes his hair as having been something of a dun colour. It was light hair. In conclusion he says, "I cannot tell you one mark by which I should know him." Gentlemen, I am really almost ashamed to comment on evidence like this, of persons who really knew nothing of ARTHUR ORTON, and yet were called to prove identity in this Case. MRS. SMITH is a Witness who says she saw him a little time before he last sailed. When he was 14 years of age she had never had any conversation with him except passing the time of day. Now, is that worth a straw? The next person I call your attention to is THOMAS WALLACE. He appears to have some recollection of him when he was 14 years of age. He remembers that he had a twitching of the eyes and limbs. Not one word

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is said by him about the dropping of the lower jaw. He remembers nothing of his wearing earrings. Practically, WALLACE proved nothing. In reply to a Juror, he said, "ARTHUR ORTON'S voice was very gruff the last time I saw him. It was getting very much like his father's—old GEORGE ORTON. His hair was lighter than it is now." That last answer seems to be an answer which many of these Witnesses give. I don't know whether it was suggested to them by any of those persons who said that the Defendant's hair got darker and darker every day from the commencement of the Trial in the Court of Common Pleas. I will content myself by saying that it is a perfectly safe answer. JOHN JAMES COLLINS is next examined. The Jury will remember the extraordinary exhibition which was made by this Scripture-reader. They will recollect that that Witness said he had prayed to God that morning to give him grace that he might tell the truth; but notwithstanding the solemn adjuration of the Supreme Being, which he had employed to lend a fictitious importance to his statement, it does not appear that he possessed any particular qualification for speaking on that point. He simply thought that ORTON was the Defendant and that was all. He is not asked as to a single feature or incident, or as to his ever having had any conversation with him. GEORGE WINN has no remembrance of any marks of small-pox or earrings, and gives an incoherent statement of his interview with Mr. MOOJEN, when he said the Defendant was ARTHUR ORTON; but he was a rather flighty Witness, confessedly nervous and confused, which invalidates his evidence. WALTER LEAVER is another of Mr. WHICHER'S flock, who said that for four years ARTHUR ORTON came to his shop daily and helped him to pack up nails—a rather unlikely story, considering that ORTON is represented by all the Witnesses as an indolent, lazy brute, who would do nothing unless he was forced. JOHN WHITE is the next person to whom I will call your attention, and he knew ORTON up to 1848, the time that he was 14. Singularly enough, he recognised the Defendant by his voice, which he recognised when he heard him speak at the Bankruptcy Court. I ask you to bear in mind that the Witness does not recognise ARTHUR ORTON as playing with him until his twelfth year. ROBERT WHITE is the brother of the last Witness, and he, too, recognises him by the voice. As to WILLIAM SYRETT, the comic Witness, who was winking and blinking at the Defendant as if he wished to rival Mr. HAWKINS in burlesque, I spoke of him before, and will not make further reference to him. Mrs. SYRETT says she never spoke to ARTHUR ORTON but once, and seems to have lost sight of him till she saw him in Court, and she professes to recognize him by hearing him speak. The next Witness we have is THOMAS CREED, who says that

Arthur Orton was in-kneed. He does not recognise the pock-marks. He gives us hardly any further information. William Willoughby tells us he has a recollection of Arthur Orton having a nervous affection in the face, but his evidence is not worth commenting upon. The next Witness is Joseph Smith, who says he did not wear carrings, and that the ears were not pierced, and rather gives us recollections of his schooldays than anything else. Hannah Johnson comes next, and has hardly any knowledge of Arthur Orton. She has no recollection of him being marked with the small-pox. She does not tell us any of his features, and practically does not enlighten us in the least degree. Charles Lawrence is another of Mr. Whicher's flock. He left Wapping in 1847. He is the man who gave us an account of the meeting at Southampton, and my notion is that he is what is called a plant. When you bear in mind the extraordinary circumstances under which the gentlemen were brought to his house you will be inclined to think that the meeting was arranged between him and Bowker.

The Lord Chief Justice: I don't believe that there is anything to show that he had any communication with Mr. Bowker before the meeting at Southampton.

Dr. Kenealy (referring to his notes): I see your lordship is right. Nothing is proved: though much may be suspected.

The Lord Chief Justice: A communication was sent to him desiring him to go to Southampton, and he went. That is all.

Dr. Kenealy: Charles Lawrence tells us that he left Wapping in 1847, at which time Arthur Orton must have been a very tender age indeed.

Mr. Taylor (Juror): You forget, Dr. Kenealy, that you put Witnesses into the box who had not seen Arthur Orton since he was nine years old.

Dr. Kenealy: I only followed the bad example which had been set me by the Crown; and when I come to those Witnesses you may be sure that I shall lay very little stress upon them.

The Juryman: You have the advantage in numbers.

Dr. Kenealy: And I hope also in weight.

Gentlemen, I have pointed out thus far the weakness of the Case for the Prosecution, so far as regards their Orton theory. I have done so, perhaps tediously, but I have felt it necessary. Believe me when I tell you that I am as anxious for your personal honour as I am for the fate of my Client: I have therefore deemed it essential that I should remind you of things that seem so far off. I should regard a wrong verdict in this Case as absolutely fatal to Trial by Jury; as being the first prelude to its final downfall. It would strike a blow against that time-honoured institution, from which, as I believe, it would never recover in public estimation. I regard a verdict in my Client's favour as being his absolute due. And not I only—but the whole People of England, expect from you only one verdict. With what joy would the enemies of English freedom hail a verdict which was against the conscience of the country. Those who have been so long earnestly engaged in the work of centralization, in sapping by degrees all that makes our country dignified; who have so long been working to abolish Trial by Jury, and to remit the decision of causes to Judges—who long to see Cadis among us as in Eastern despotisms, where gold and favour so often outweigh justice; all such are awaiting and watching the result of this Trial, with eager but with hostile eyes. In one view they hope it will aid them in their malevolent designs upon the constitution, and upon that which has long been regarded as our National Palladium—Trial by Jury. In another view they dread a verdict of acquittal, for it will war against their machinations. Oh! Gentlemen, bear with me if I entreat you, under these circumstances to watch yourselves as carefully as they watch you. Be just and fear not. Be above all prejudices! And if your verdict be such as I expect, all England—nay, the whole world—will applaud it.

[The Court then adjourned.]

ONE HUNDRED AND FORTY-FIFTH DAY.—Friday, December 19th, 1873.

Mr. Justice Mellor and Mr. Justice Lush took their seats on the Bench.

Mr. Justice Mellor: The Lord Chief Justice will be here presently. Meanwhile the Case may be proceeded with.

Mr. Cooper-Wyld: If your lordships please, it is with very great regret that I have to announce to your lordships that Dr. Kenealy is too ill to come down to Court this morning. He has written to me to that effect, and to ask your lordships to adjourn the Court to the time that was previously arranged on rising to day, to the 29th instant. Your lordships will fully appreciate the position I am placed in, Dr. Kenealy being absent and it being almost impossible for me to take up the thread of his Speech; and as the adjournment will only be one day more than what was intended, it is with the utmost submission, but still with some confidence, that I throw myself on the courtesy of the Court and ask for this indulgence. I do not know whether the Jury will assist me in asking your lordships for this adjournment.

Mr. Justice Mellor: No, you cannot ask that. The Judges will ask the Jury, if they desire the opinion of the Jury upon it. But I do not quite understand what it is you propose,—that we should adjourn, or that Mr. McMahon should be permitted to continue the observations upon what I may call the Wapping Witnesses, which is the part, you know, that Dr. Kenealy was upon when the Court rose yesterday? Is your application for an absolute adjournment, or that Mr. McMahon or yourself should continue?

Mr. Cooper-Wyld: My application is for an adjournment.

Mr. Justice Mellor: Is not Mr. McMahon here?

Mr. Cooper-Wyld: No.

Mr. Justice Mellor: I can quite understand why you are unwilling, because you have only recently come into the Case; but Mr. McMahon has been in it from the beginning, and I should have thought he might have continued the comments upon the Wapping Witnesses, and so have saved the necessity of our waiting to hear Dr. Kenealy on that part of the Case. It is so important that we should waste no time. I mean the Case has gone on to such an incredible length, that I confess for my own part I feel the greatest reluctance to have any other adjournment than is absolutely necessary.

Mr. Cooper-Wyld: I fully appreciate what your lordship says; but I am in this position, that neither Dr. Kenealy nor Mr. McMahon is here.

Mr. Justice Lush: Why is Mr. McMahon not here?

Mr. Cooper-Wyld: My lord, I know not.

Mr. Justice Lush: He is in the Case, and it his duty to be here.

Mr. Justice Mellor: If it were the middle of any argument which was of importance to the general Case I should have thought it would be very inconvenient to let any other gentleman interfere; but we are in a part of the Case (the most legitimate part of the Case, and which I venture to think is the nearest approach to a Summing-up that we have yet had in this recent Speech) which Dr. Kenealy's junior might proceed with. I quite agree that you ought not to be called on, because having come so recently into the Case you cannot be expected to be master of all the details.

Mr. Cooper-Wyld: But, my lord, as this portion of the evidence is so important, so much more anxious am I that Dr. Kenealy should continue it himself rather than one of his juniors.

Mr. Justice Mellor: I do not like to make any adjournment, or take any course which interferes with the arrangement for the further proceeding of this Case in the absence of the Lord Chief Justice, because the most important duty devolves upon him, and I prefer that he should be here before we yield to such an application.

Mr. Justice Lush: I think we had better consult together when the Lord Chief Justice comes.

Mr. Justice Mellor: I think so; as soon as the Lord Chief Justice comes, which I expect almost every minute, we will consider whether or not this is an indulgence which ought to be granted.

Mr. Hawkins: Might I suggest this, that as Mr. McMahon is not here he should be immediately communicated with to be in attendance upon your lordships?

Mr. Justice Lush: Yes.

Mr. Justice Mellor: Inquiry had better be made as to whether he is near the Court. This is a matter as to which if the senior is taken unwell in the middle of a Case, the Court would allow the junior to take it up; and as far as I am concerned personally, I should have no objection myself merely to allow Mr. McMahon to read any portion of the evidence, and if he were here that would remove one of those difficulties. But at the same time I would rather wait until the Lord Chief Justice comes before we announce definitely what we will do.

Mr. Cooper-Wyld: I may say this, that I am informed by those who instruct me, that Mr. McMahon is unaware at present of Dr. Kenealy's illness.

Mr. Justice Mellor: That does not dispense with the necessity of his presence.

Mr. Hawkins: Mr. McMahon ought to have been in Court.

Mr. Justice Mellor: In a Case of this sort I am surprised that Mr. McMahon is not here.

[Their lordships retired, and presently returned with the Lord Chief Justice.]

Mr. Cooper-Wyld: My lord, I made an application, which probably the other Judges have communicated to your lordship, asking you to grant an adjournment on the ground of Dr. Kenealy's illness.

The Lord Chief Justice: Mr. Wyld, my learned brethren have told me what has taken place, and we have been considering the matter. I quite agree with them that it would not be fair to you to call on you at a moment's notice to take up the thread of the argument and go on with it to-day; therefore I was quite willing that there should be an adjournment from this time. But we think it right to say—of course that, through you, would reach Dr. Kenealy—that considering the length of his former

address, twenty-one working days, and that he has now been speaking for ten days, and during a considerable portion of that time going over, I must say, the same ground, we think there must be some limit, on our re-assembling, to the address of Counsel, and that we do certainly expect that another week will bring his address to the Jury to a close, and that we shall require it to be brought within the limits of the time I have been speaking of.

Mr. COOPER-WYLD: Of course, my lord, I shall convey that to Dr. KENEALY directly I leave this Court.

The LORD CHIEF JUSTICE: I am extremely sorry at the same time to put any restraint on the time the learned Counsel might think it necessary for his address to the Jury or in the conduct of the cause; at the same time it must be brought within certain reasonable limits, and we cannot help thinking that another entire week ought to give him full opportunity of bringing his address to a close and we shall require that to be done.

Mr. COOPER-WYLD: If your lordship will pardon me making this observation; although left here alone, rather than that the Case should in any way fall to the ground, I should be perfectly ready to go on, though of course it would be a great disadvantage to my Client and to the detriment of this Court.

Mr. Justice LUSH: Mr. MCMAHON is not here.

Mr. COOPER-WYLD: Mr. MCMAHON is not here, and therefore I feel, not having heard the evidence on which I should have to speak, that I should be at a disadvantage.

The LORD CHIEF JUSTICE: Yes. We could not expect you to go on.

Mr. COOPER-WYLD: I am perfectly ready to go on, and I do not wish it to be cast on me on some future occasion that I had neglected my duty.

The LORD CHIEF JUSTICE: I am sure no one would think of saying that. You are taken unawares at a moment's notice, and therefore could not be expected to take up the thread of Dr. KENEALY'S argument, not having possibly turned over in your mind the course which, if you were leading and had to address the Jury, you would have taken. I do not think it fair to Counsel to ask him to go on under such circumstances.

Mr. COOPER-WYLD: It is a portion of the Case which I have not heard the evidence on.

The LORD CHIEF JUSTICE: You are quite right in asking for an adjournment; and the course we shall pursue is this: that as some of us will be going out of town, and may not return until Monday morning, we will meet on Monday morning the 29th instant at twelve o'clock, and after that time we will go on at the usual hour.

[Adjourned to Monday, December 29th, at 12 o'clock].

DR. KENEALY TO MR. J. J. COOPER-WYLD.

The following is a copy of the letter sent by Dr. KENEALY to Mr. COOPER-WYLD:—

"2, Gray's Inn-square, Friday, 9 a.m.

"DEAR COOPER-WYLD,—I am so exhausted and unwell this morning that I am utterly unable to go down to Court. I am in bed, and, as you see, am obliged to call in an amanuensis to write for me.

"With the permission of the Court, you or Mr. MCMAHON will have to take my place to-day and continue the Speech; or, if the Jury prefer it, they might kindly solicit the Court to anticipate their adjournment by the few intervening hours between now and four o'clock.—Yours truly,

"EDWARD V. KENEALY.

"J. J. COOPER-WYLD, Esq.,
Court of Queen's Bench, Westminster."

TICHBORNE LETTERS.

34, Bessborough-street, S.W.; December 25th, 1873.

DEAR ———,—I have great pleasure in acknowledging the receipt of your letter, with the drawings enclosed. I do not remember having received any like them before—they certainly are very good. . . . I am spending my Christmas shut up in my office quite alone—not for want of some place to go to, for I have received many invitations to dine out, but I feel so miserable that I think I must make others feel so who have no cause. I sincerely hope —— and yourself have had a Merry Christmas, and I wish you a happy New Year.

I hope, as you suggest, that the new year will clear away some of the thick cloud which now hangs over me; but it is hard to battle with such superior forces, but still I do not fear the result.

Out of twelve Englishmen there must be some honest men amongst them, who have noticed the behaviour of some of the others, and the conduct of the Prosecution, which I should think was unparalleled. — Again thanking you, believe me, sincerely yours, R. C. D. TICHBORNE.

Bessborough-street, December 26th, 1873.

DEAR ONSLOW,—Did you get the TICHBORNE photos of the Judges and others connected with the Case. I sent it to you last week and I feel anxious to know whether you received it. I have read Mr. SHANKLIN'S letter, it is the same exactly as he sent me—all bosh—he must be mad, I enclose it to you as you wished, subscriptions have entirely ceased. Thanks for the stamps you sent in your previous letter, I hear Lord RIVERS did not succeed in seeing Dr. KENEALY after all, when in town. I have not heard how he is, only that he is expected to return to night. I have not been outside the house but twice since the Court adjourned, I have been unwell, and have refused to see almost everyone. I shall be all the better for these few quiet days. Hoping you have had a merrier Xmas than I,—Believe me, yours truly, R. C. D. TICHBORNE.

ONE HUNDRED AND FORTY-SIXTH DAY.——MONDAY, DECEMBER 29TH, 1873.

The Trial of the Claimant was resumed at the Court of Queen's Bench, before Lord Chief Justice COCKBURN, Mr. Justice MELLOR, and Mr. Justice LUSH. The time fixed for the Court to assemble was 12, and precisely at that hour the Judges entered the Court and took their seats. At that moment only six of the Jury were present, but they were all in the box within a minute or two afterwards. The Claimant and his Counsel had arrived some minutes before.

Dr. KENEALY said: My lord,—My friend Mr. COOPER-WYLD has conveyed to me the purport of certain observations which your lordship made last Friday week with reference to the restriction of my Speech to five days.

The LORD CHIEF JUSTICE: Not quite that. We did not say five; but we thought that a full working week ought to bring your Speech to a close.

Dr. KENEALY: But, my lord, suppose I should not be able to close within the time? Suppose that—with every desire to do so, which I honestly say I have—I should not be able? Your lordship can easily conceive that to protract the Case is no luxury to me.

The LORD CHIEF JUSTICE: *But there must be some limit to your address.* We must not—noting the vast importance of this Case—forget that this Court sits to administer justice, not only in this but in other Cases, in which her Majesty's subjects are suitors. There must to every proceeding in the administration of justice be some just and reasonable limit. We cannot help thinking, and we must say, that you have dwelt upon trivial topics instead of upon those which concern the real main questions to be decided in the Case. The impression produced upon our minds, too, is that time has been wasted in unnecessary attacks upon persons who were not fairly open to them. That has been the main staple of your Speech, dealing with trivial topics and casting broadcast imputations and accusations.

Dr. KENEALY: My lord, I cast no imputation or accusation that I did not feel I was fully warranted in doing.

The LORD CHIEF JUSTICE: I have not said you did.

Dr. KENEALY: And I do not feel the least regret for having done so. All I say is this—that, although I shall use every means of confining my observations within a reasonable time, it is impossible I can pledge myself for five or six or any other number of days.

The LORD CHIEF JUSTICE: We must, then, exercise our discretion. So far as we feel you are dealing with great topics material to the issue there will be no disposition on our part to curtail your address by a single moment; but we are bound to say, from the experience we have had, that *we shall, if necessary, exercise our power to limit the further duration of the Trial.*

Dr. KENEALY: You will bear in mind, my lord, that at the Trial in the Common Pleas only 84 Witnesses were examined for the Plaintiff, and 16 for the Defendant—100 in all; and the Trial lasted 103 days. I believe that the Solicitor-General occupied more than 25 days in merely opening his Case to the Jury. Here 500 Witnesses were examined, and this is the 146th day.

The LORD CHIEF JUSTICE: I quite agree with you as to that. Strictly speaking, the privilege of Counsel in speaking in evidence for the Defence is to sum-up that evidence. We have not sought, up to this time, to interfere with the exercise of your discretion; but when you go over the same ground over and over again——

Dr. KENEALY: My lord, I am sorry if I have done so. It was not my intention to go over the same ground more than once. I should have thought your lordship would have stopped me. I was dealing with the evidence of the Wapping Witnesses, but from an entirely new point of view.

The LORD CHIEF JUSTICE: Just understand that we really are not desirous of carrying out to the letter what we said on the former occasion. We only put it to you to exercise the best discretion you can in not consuming more of the public time than is necessary for the legitimate purpose of the Defence.

DR. KENEALY: Of course, my lord, I shall do that with pleasure.

The LORD CHIEF JUSTICE: So long as we think you are really throwing light on the Case and assisting the Court and the Jury to come to a right conclusion, by putting before them all that can be properly said for the Defence, we shall not interfere, but we are bound to see—in the interests of the public—that time is not wasted on irrelevant topics.

DR. KENEALY: Many observations were made by Mr. HAWKINS to which I am bound to allude. If I do not it will be said I had failed to answer them.

Mr. Justice LUSH: But that, Dr. KENEALY, belonged to the Opening Speech. You had the opportunity of doing so. Your right now is to sum-up.

DR. KENEALY: True, my lord, but I was pressed much by your lordships to bring my Opening Speech to a close, and so my Speech was curtailed of a great many observations which go directly to the issue. There is one most material matter—namely, in reference to the DOUGHTY Witnesses, which I did not touch upon.

The LORD CHIEF JUSTICE: No doubt. I think we understand one another now.

DR. KENEALY: I hope so, my lord. Gentlemen of the Jury: I am sorry that any of you should have been inconvenienced in coming to Court on Friday week last. I was on my way to Court, but felt myself so completely done up in mind and body, that I was quite unequal to the task of proceeding. My learned friend, Mr. COOPER-WYLD, was ready to go on, but my lord thought that that would lead to some inconvenience, and was good enough to adjourn the Case. On the preceding Thursday I was addressing you upon the fact that the Witnesses from Wapping knew so little of ARTHUR ORTON—the great mass of them only knowing him up to 1848—that their testimony is not to be relied or acted upon in a case of identity. Gentlemen, though I may appear to some of you to have gone more than once over the same ground, to my mind it did not present itself in the same aspect. As I said before, it is no luxury to me to have the great incubus of the Case weighing on my mind night and day, and crushing me as it were under an overwhelming weight; destroying my rest; almost annihilating my health and strength. My object is to get over my work as quickly as I consistently can with my duty to my Client, and to omit nothing that is material to his Defence in this gigantic and unprecedented Case. We have the whole of this man's life to go into. I told you before that the Prosecution might have indicted him in respect of some special matter which would have equally settled the great issue to be decided; but they have not chosen to do so. Instead of that they have put us upon enquiry into the whole history of his life, and therefore it is that the Trial has been so protracted. I now, Gentlemen, resume my review of the evidence given by the Prosecution for the purpose of showing that the Defendant is ARTHUR ORTON. The next Witness in this class I have to allude to is THOMAS HALSTEAD. He only knew ORTON before 1848, and therefore knew little of him. His testimony, therefore, may be disregarded. Then we had a Witness (ROBERT JURY) of the same class—one of Mr. WHICHER'S people—and he, too, knew ORTON up to 1848. You will not place much reliance on his evidence, more especially as he swore he only received a sum of 5s., and half a sovereign for his expenses. He tells us of a curious conversation he had with Mr. HOLMES, in which he said that CHARLES ORTON had turned over to the other side; to which Mr. HOLMES replied, "They are a bad lot." When the Crown Counsel get out from their Witnesses that the ORTONS were a bad lot, it does not seem to lie with them to comment on the fact that I have not called any member of the ORTON family. Next, we have Mr. BROWNE, a Surgeon, who admitted, in cross-examination, that he only knew ORTON as a little child. I submit to you that his evidence is not entitled to any weight whatever. The next Witness was ALFRED SCHOTTLER. He knew ORTON when he was 14 years old, and admitted that he never saw ORTON after he returned from sea. We then had a Mrs. RICHARDSON. She said ARTHUR ORTON had the smallpox, but very slightly, but did not remember whether it was before or after he went to sea. She never, she admitted, had spoken to ARTHUR ORTON altogether five minutes in her entire life. Is it not perfectly farcical to rely on such evidence? Is it not lamentable and ridiculous? There was another SCHOTTLER examined, a brother of the former Witness, and he, like a great many of the Witnesses, was asked whether he had ever seen ORTON and Miss LODER together, and it is a curious thing that of all the Wapping Witnesses examined, not one of them ever had. This Witness had had interviews with WHICHER, and I need not say more as to that fact. He could state nothing definite or reliable as to ORTON after his return from sea; in fact, he admitted, he had only spoken to ARTHUR ORTON once in his life, save to pass him the time of day. Fancy the Case for the Crown depending on such evidence of identity! The next person we have is a person of the name of REEVE. I shall only spend a moment upon his evidence, as I mean only to deal with the broad features of this class of evidence—not wishing to exhaust you or myself, or to waste the time of the Court. The Witness swore he knew nothing at all of an ALFRED SMITH at Albury or Wagga-Wagga; but that is not proof that no such person existed as the Defendant said he did. Mr. HENRY ANGELL'S evidence is the next to which I shall allude. He says he saw ORTON in September, 1853, in Hobart Town, and adds that in 1867 he went to Mr. HOLMES'S office, where the Defendant denied having made any will in Australia, and that at the mention of a Wagga-Wagga will Mr. HOLMES expressed surprise. Now, what I ask you to say is this: that Defendant was in such a state of mind from drinking, smoking, or other causes, when he made his will, that he forgot all about it. Remember the strange and wild statements he had made about the 66th Regiment of Cavalry and other things.

The LORD CHIEF JUSTICE: You are quite mistaken there—the denials you refer to were made at Sydney, and the will had been made previously at Wagga-Wagga.

DR. KENEALY: Yes; my point is that he had forgotten entirely about the will, and that he did not know what he was doing. Certainly the statement was made within so short an interval of time that I think you can fairly say that the extraordinary conduct he was guilty of at Mr. HOLMES'S office, in denying the existence of the will, when Mr. ANGELL told him he had actually seen the will with his own name in it—and reminded him of the other facts, which if he had been in his right mind when they occurred, he must have remembered—was due to the fact that he had forgotten all about it. There was a further interview arranged with Mr. ANGELL when Mr. PARNELL was present, but it is an extraordinary fact, that although they came for the purpose of identifying the Defendant, they said not one word as to his identity until he had gone away. Then follows a Witness of great importance. There are a great many Witnesses whose evidence I will not dwell upon. I have already dealt with them, and am not entitled to go over beaten ground. You will remember the observations I made upon them, if you think them worthy of consideration. Gentlemen, before I go to the evidence of Donna CLARA HALEY, I must say that the evidence given through interpreters is always more or less unsatisfactory, and that two worse interpreters than the French and Spanish interpreters produced here could not well be found. The Court had more than once to interfere because they saw that the answers were not literally translated. If I had the honour of being a legislator, and could influence legislation, instead of allowing interpreters to be brought on as agents of either party, I should advise that interpreters should be officers of the Court and brought on by the Court.

The LORD CHIEF JUSTICE: I quite agree with you there, Dr. KENEALY; it would be a great improvement if that were the case.

Mr. TAYLOR (Juror): You could have had your own interpreter.

DR. KENEALY: If we had the Bank of England behind us, Sir, we could do a great deal. Gentlemen, I have already said that the account Donna CLARA HAYLEY gave of ORTON'S stay at Melipilla was incredible—as to his hunting and so on. This was one of the few Witnesses who spoke to a tattoo.

The LORD CHIEF JUSTICE: You mean a tattoo upon ARTHUR ORTON?

DR. KENEALY: Yes, my lord. She was asked how long before her marriage the person she called ARTHUR ORTON was there, and she said five or six years after, and if you add five or six years to 1847, the year of her marriage, you will have the time ROGER TICHBORNE was in South America, and when it was at least possible that he was at Melipilla, but when ARTHUR ORTON could not have been.

A JUROR: She described him as being sixteen years old.

DR. KENEALY: Yes; but she also said he was there five or six years after her marriage. I put the one against the other, for there is no pretence for saying ARTHUR ORTON could have been in Melipilla in 1852 or 1853. Again, she spoke of seeing a mark on the foreigner's arm, and that he said it was "A. O." for ARTHUR ORTON. I will ask you, is it possible that the small mark on the Defendant's arm—situated as it is where there are so many veins and tendons—could by possibility have been caused by the obliteration of the tattooed letters "A. O.," as suggested by the Prosecution? Although this Witness says she knew this person a year-and-a-half she stated that all the time the stranger was at Melipilla he was well and fat. But the other evidence shows that at a subsequent period ORTON was still bad with St. Vitus's dance. The person she speaks of could not, therefore, have been ARTHUR ORTON.

The LORD CHIEF JUSTICE: I think one Witness said the twitching of the limb had gone, but that the twitching of the face remained.

DR. KENEALY: Yes, my lord. Yet this woman never seems to have observed any traces of St. Vitus's dance, which was observable after his return home. This woman, too, received a large sum for her testimony.

The LORD CHIEF JUSTICE: She was also examined before the Commission in Chili.

DR. KENEALY: Yes, and she says—if she can be credited—that she got only five dollars for that.

The LORD CHIEF JUSTICE: *I mean to say that if she gave the same evidence on both occasions it lends strength to her credibility.*

DR. KENEALY: It would not have done for her to recede from her former evidence. She received a considerable sum—$1,000, equal to £200, and expected an indefinite sum for expenses—and it is for you, Gentlemen, to decide whether that would colour her testimony. Then my Lord Chief Justice asks her again if she observed anything about his face, and she said that

she did not, except that he had a moist and pouting mouth. Now, I ask you whether it is likely, considering the state in which ARTHUR ORTON was when he started on the voyage, he would not have mentioned to Donna HALEY that he had had the St. Vitus's dance? I ask you to believe, therefore, that she is speaking of some person who is not ARTHUR ORTON. It is a great pity that she should have had such long communication as she appears to have had with BARRA. I will not trouble you with all this nonsense about the Chancellor's son and the Butcher's son, because it is altogether unlikely that ARTHUR ORTON would have represented himself as a Chancellor's son. There is one singularity about the evidence on the tattoo which I should like you to bear in mind, and that is the exact resemblance in the manner in which ROGER TICHBORNE exhibited his tattoo to the manner in which ARTHUR ORTON is said to have exhibited his. They are represented as always rolling up their sleeves and showing the marks. I ask you whether this is likely? It seems to me hardly credible that he should exhibit the tattoo to this woman, as described, without saying a word. That she thought there was money in the Case at an early period was shown by the conversation at ORTEGA'S house, when reference was made to letters he had being worth one or two thousand dollars. She tells us something very extraordinary about what ARTHUR ORTON had done while he was at Melipilla. She says that he was a Protestant, and was baptized as a Roman Catholic whilst there. That story is either true or false. If it had been true, proof of the baptism could easily have been obtained, and as no such proof has been forthcoming, I ask you to say that it is not true. Then, how does this woman come to tell this untruth, which she says was the common village talk?

The LORD CHIEF JUSTICE: She does not say that she knew it of her own knowledge, but simply that it was talked about in the village. Rumour is not proof.

Dr. KENEALY: At all events, my lord, she speaks of it not exactly as a matter of hearsay, but as a thing which was known perfectly well in the village. We know that it was not true, because Mr. PURCELL says that he made every inquiry, but failed to discover any traces or record of any such thing.

The LORD CHIEF JUSTICE: Did he say that?

Dr. KENEALY: I think so, my lord. Gentlemen, we are plunged into a mass of difficulties about this baptism and change of religion.

Mr. Justice LUSH: I have not a note showing that Mr. PURCELL said that.

LORD LYNDHURST.

Dr. KENEALY: I believe he said so, my lord; and when I come to deal with his evidence, I hope to be able to give you the reference. Gentlemen, the next Witness was Mrs. MINA JURY, and you remember the extraordinary animus she manifested in this Case. There are only three persons who spoke of a tattoo mark on ARTHUR ORTON, and she is one of them. She said that she met him in his butcher's dress in Hobart Town, having his sleeves tucked up, and she swore she saw the letters "A. O.," and pointed to a spot near the wrist where no one but a maniac would allow himself to be tattooed. This is a person who has had much communication with Detectives. I will not comment again on that fact, because you know the conclusion I draw from it. You will bear in mind the fact that not one of the Wapping Witnesses spoke of ARTHUR ORTON having been tattoed. Remember, too, that this woman expected the very large sum of £500 from the Crown, and considered that £1,000 would not pay her for leaving her orphans. She told you gravely, Gentlemen, that this great, hulking, splay-footed fellow, ARTHUR ORTON, had nice hands and small feet. Then she admitted, that when asked by M'KENZIE from time to time, during two years, whether ORTON had tattoo-marks, she forgot all about it. "I did not remember that I had seen the mark;" and she gave as a reason that her husband and son had died, and that she was in great trouble. Can you think that while her mind, during two years, was a blank as to the mark, she afterwards remembered it? I think I am right in saying that these two women are the only Witnesses who speak as to the tattoo mark on ARTHUR ORTON, and you have the evidence of HENRY ALLEN, the Cook of the 'Middleton,' who in 1852 frequently saw ORTON'S arms bare, and who states that he saw no tattoo mark on either of them. I ask you, therefore, to dismiss entirely from your mind the evidence of those two women. Again, while ORTON was in the service of Mr. FOSTER, he must frequently have been seen sheep washing by Mrs. M'ALLISTER and her husband, but they do not venture to say that they saw any sign of a tattoo mark upon him. He must also, as my friend Mr. M'MAHON suggests, have frequently been seen killing cattle bare armed. The conclusion I ask you to draw is this: that the two women to whose evidence I have been referring are not

reliable Witnesses. It is not, therefore, true that ARTHUR ORTON was tattooed. The story was merely invented by the two women to account for the blotch on the Defendant's arm, which Lord BELLEW said he remembered on the arm of ROGER TICHBORNE. It is a maxim of law, that where a Witness speaks falsely as to one thing he cannot be believed in anything.

The LORD CHIEF JUSTICE: How is that a proposition of law?

Dr. KENEALY: You have heard, my lord, of "*falsus in uno falsus in omnibus*"?

The LORD CHIEF JUSTICE: It is a proposition I should not accept myself. The tendency of the human mind, if left to itself, is to tell the truth, but there may be motives which produce falsehood. A person may have a motive for stating a falsehood with reference to a particular matter, but no motive with reference to other matters. To say that, because a falsehood has been uttered from a motive, therefore all the evidence of the person stating that falsehood is to be thrown overboard, it is bad in logic as well as in law.

Dr. KENEALY: Whether it is truth or a fallacy, it is a very ancient legal maxim that for a long time has been accepted, so far as I know, without any reproof.

The LORD CHIEF JUSTICE: I cannot admit it as a legal maxim.

Dr. KENEALY: In my judgment, which I give with considerable deference, after what has fallen from the Lord Chief Justice, though it is not a legal maxim, it is a good one to put with regard to human testimony. It is impossible for us to draw a line where truth ends and falsehood begins. Then as to the motives which may induce Witnesses to say that which is not true, are they to be discovered? You may give a Witness £1,000, and yet he may give his evidence with the most perfect truth and accuracy, and on the other hand you may give another Witness a small sum of money and he may give a colour to the whole of the testimony in consequence.

Mr. TAYLOR (Juror): Does not "false in one false in all" apply to Captain Brown? (A laugh.)

Dr. KENEALY: I shall come to that Witness later on. When I do, I will tell you what my opinion is with regard to his testimony.

A JUROR: Mr. HOPWOOD mentioned the tattoo.

Dr. KENEALY: That was the tattoo on CASTRO.

The LORD CHIEF JUSTICE: He did not know CASTRO.

Dr. KENEALY: I am much obliged to you for calling my attention to it, because I don't, like an ostrich, want to hide my head in the sand, and think no one is pursuing me. That is very unwise. I see from the printed evidence that the Witness said "I have seen his arm, and I remember a small mark upon it, but I cannot swear what kind of mark it was, beyond that it was a small blue mark." I do not pretend to say, Gentlemen, that the Defendant did not pass himself off as CASTRO. The Witness there is not speaking of ARTHUR ORTON.

The LORD CHIEF JUSTICE: On the contrary, I think he is.

Mr. Justice LUSH: He says he never knew CASTRO.

The LORD CHIEF JUSTICE: That is another matter.

Mr. HAWKINS: He says he saw him at Newburn Park as ARTHUR ORTON.

Dr. KENEALY: CASTRO'S name, he says, was over the door.

The LORD CHIEF JUSTICE: He said he was with him at Newburn Park, and saw him there as ARTHUR ORTON; and then he said that when he had got to Wagga-Wagga he found him there as CASTRO.

Dr. KENEALY: He speaks of a person who I say is the real CASTRO as being known to him as ARTHUR ORTON. The only person I can admit who ever saw the marks on the real ARTHUR ORTON is Mrs. JURY. I cannot admit that this is ARTHUR ORTON whom HOPWOOD speaks of. He is CASTRO.

A JUROR: The Witness said he changed his name in consequence of some difficulty with regard to a horse.

The LORD CHIEF JUSTICE: There is only one person who speaks of the undoubted ORTON having the mark. Two others speak of ORTON, but the man they refer to is the disputed ORTON.

Dr. KENEALY: That's exactly what I say. I put the Witness HOPWOOD before you, Gentlemen, as a man who is not to be believed at all. With regard to the changing of name over the horse affair, this Witness made what appears to me to be a mistake upon this important matter. There was some question about stealing or taking possession of a horse, and when I cross-examined MILLER about it he said that the Defendant was implicated in the affair with a man named BORROUGHS. Well, it is clear that the man he referred to was not BORROUGHS at all, but BURGESS; and there never was any charge brought against the Defendant with respect to unlawful possession of horses except the one to which MILLER speaks, and which took place at Castlemaine. In this affair the charge was a joint one against ORTON and the Defendant. Then he says the population of Albury was 1,700 or 1,800, and yet he ventures to say that there was no ARTHUR ORTON there.

The LORD CHIEF JUSTICE: It struck me at the time that he might not have known anyone in the place.

Dr. KENEALY: And yet this was the man who swore to "*the Vow*" being in Defendant's handwriting.

The LORD CHIEF JUSTICE: If I remember rightly he said he did not remember the name.

Dr. KENEALY: No, my lord; he went the whole length, and said that he knew ALBURY very well, and was quite sure there was no ARTHUR ORTON there. Now a man who gives his testimony in this loose manner cannot be relied upon, and I ask you therefore to disbelieve him.

The LORD CHIEF JUSTICE: You can place no reliance upon particular parts of his evidence if you like.

Dr. KENEALY: My lord, we are asked here to rely upon everything, however improbable, and every word, however incredible which Witnesses choose to swear to. In this, our present Trial, differs from all preceding ones; for I never before heard or saw it contended that all the Witnesses on one side were absolutely truthful, and all the Witnesses on the other were perjured—or as it is now politely called, were "mistaken." This has been the rule here from the begining, and I suppose it will be so to the end—*qualis ab incepto*. I hope, however, that it will form no precedent for the future. We have had great men as orators and as lawyers at the Bar of England. COKE and BACON have pleaded in this Hall; and HALE and HOLT, and SOMERS and MURRAY; but I do not think that they descended to such practices as I here condemn. WILMOTT and BLACKSTONE, and DUNNING and ERSKINE have advocated here for the CROWN, and for the Citizen, but I hardly fancy that they have been the models which Mr. HAWKINS follows; ROMILLY too, and COPLEY and BROUGHAM have left us different examples. No man was ever more zealous for his cause than LYNDHURST; but even in the QUEEN'S Trial, when all that could gratify the vastest ambition of a lawyer tempted him, he did not sully himself, as his leader GIFFORD did. All these men constitute what may be called the "constellation of English lawyers;" we rejoice and are proud that we possessed them; but how do we feel in the presence of Mr. MERRYMAN? We associate gravity and grandeur with the name of DEMOSTHENES. His rival ÆSCHINES was a perfect gentleman, and finished rhetorician. ISOCRATES was smooth and silvery as CHELMSFORD, and CICERO impetuous as the ocean. These qualities could not be expected, and have not re-appeared here. The lines of CHURCHILL alone convey the full idea of what we have witnessed:—

> "A speaking Harlequin, all grin, all whim,
> Finger on nose; a leer in every limb;
> Plays to the eye, with a mere monkey's art,
> Shows that he acts, but acts in falsehood's part.
> We laugh indeed, but scorn ourselves to find
> Our fancies tickled—not the heart or mind."

It is said of BLACKSTONE that he never sat down to write his Commentaries without having a bottle of port before him; and this Trial seems in some measure to have been conducted in an equally jovial spirit. Only that for Port, we seem to have had Gin. Old Tom has been as master of the ceremonies.

[The Court then adjourned for luncheon].

On re-assembling,

Dr. KENEALY continued: Mr. PENROSE HAWKES is the next Witness upon whom they rely, but this Witness in answer to the question of Serjeant PARRY, "How often are you prepared to swear you spoke to ORTON?" said, "Not more, perhaps, than once;" and yet this Witness identifies the Defendant with ORTON; and showing what is unfortunately only too general in this Case—namely, a considerable amount of party feeling—he says, "He is so big now; he is a bullock compared to what he was when I knew him;" and as he said this, he pointed contemptuously at the Defendant. I submit to you that he was one of those loose Witnesses whose evidence we ought not to accept; at all events without a great deal of consideration. The next Witness is Mr. PETTIT SMITH, who has described himself as a kind of Jack-of-all-trades. He falls into a remarkable mistake, for he thinks that the Defendant was in the service of BURNS, who, in point of fact, does not seem to have carried on any business at all. A great point has been made by the Prosecution of a statement of this Witness that the butcher's shop at Wagga-Wagga was very nicely set out. But that is exactly what one would have expected of a gentleman who had conceived a fallen, degenerate, and ridiculous fancy when a boy for cutting up and dissecting cats and dogs.

The LORD CHIEF JUSTICE: Was it not the artistic manner in which the meat was cut up that impressed the Witness?

Dr. KENEALY: It was the way in which the shop was set out. He says that it was quite a treat to see meat cut up so nicely, and that it was done in a manner they were not in the habit of seeing at Wagga Wagga.

Mr. Justice MELLOR: He goes further than that. He is asked if CASTRO made any observation on the subject, and he replies, "Yes; if I do not know how to cut up meat, I don't know who should in this colony. I was apprenticed to cutting up meat in Newgate Market."

Dr. KENEALY: Then comes the extraordinary statement which Mr. Justice MELLOR has just been so kind as to bring to our recollection, to the effect that, in a conversation with the Defendant, he (Defendant) told the Witness that if he did not know how to cut up meat he should like to know who did, as he had cut up beasts for Newgate Market for Mr. JOHN KING. Well, Gentlemen, I expected after this to have seen Mr. KING here, but he was not produced. How is this put against the Defendant then? Is he supposed to have told a lie? If not, why was not Mr. KING produced? I cannot understand it; but, no doubt, we shall have an explanation from Mr. HAWKINS when he comes to make his Speech. There is another statement made by Mr. SMITH which I must ask you to

disbelieve. It is well known that "our fat friend," as we may call him (pointing to the Defendant), was not a great admirer of the Church in which he was brought up, but Mr. SMITH states that ORTON on one occasion abused the Catholic Church to him in a quiet conversation they had together. I can well understand the wild, reckless, heedless man that I have described the Defendant to be, abusing his Church, and saying, "I won't do this and I won't do the other," but why ARTHUR ORTON, who knew nothing of the dogmas of the Universal Church should abuse such to Mr. SMITH I cannot understand. I hardly know whether I may refer again to that tabooed subject, the PITTENDREIGH forgeries, but I may, in passing, remind you that I put a few of those famous documents into the hands of Mr. SMITH, and he at once recognised the handwriting as being that of the person who wrote in the pocket-book; and by this he proved too much. The next person I will call your attention to is SAMUEL REED, whom I characterise as an inaccurate Witness. In examination-in-chief he said the Defendant had been in business as a butcher, on his own account, for twelve months. In cross-examination, also, he told me that after the Defendant left Mr. HIGGINS'S he went into business on his own account, and carried it on for about twelve months; but I asked him if he could swear that, and he answered "No." "Was it seven months?" I asked, but he could not even swear to seven months. That shows the rash way in which Witnesses are called to swear to things of which they are not certain. The next Witness who was in order was CUBITT, but the only observation I shall make upon his evidence is this: he produces a document supposed to have come from a butcher, and not a gentleman, because it is signed "R. C. TICHBORNE, Bart." It is a common practice of the French people to put their titles after their names.

The LORD CHIEF JUSTICE: Do you mean to say that you have seen the title attached to foreign signatures?

Dr. KENEALY: I have seen documents signed "Baron" So-and-so.

The LORD CHIEF JUSTICE: The title in that case is before and not after the name. I have seen a great many foreign signatures, but I never saw the title written after the name.

Dr. KENEALY: I say it is a foreign custom. Can it matter whether the name is before or after?

The LORD CHIEF JUSTICE: Did you ever know a man with a title put the words "Earl" or "Baron" after his name?

Dr. KENEALY: Not in England, but I say it is a French custom for a man to put the title after his name. Of course, a man could not put "Bart., Sir ALEXANDER COCKBURN;" he would put the "Bart." after the name.

The LORD CHIEF JUSTICE: He would not put it at all. (Great laughter).

Dr. KENEALY: Well, he puts it there, and there it is. (Laughter.) That is the only observation I shall make with reference to Mr. CUBITT and his "Bart." I now come to Mr. PURCELL. As I told you before, I do not purpose to say anything against him. I think great allowances are to be made for him. He was a stranger at Melipilla and was ignorant of the language of the country, and therefore must have been at the mercy of the persons who surrounded him. He is asked the number of the inhabitants of Melipilla, and he says, "I should say about two thousand;" and then—it being the object of the Prosecution to show that Melipilla was not a sporting place, because the Defendant had said that he went there to have some sport—he was asked whether he had seen any game there, and he replied that he had only seen a number of partridges. He had never seen anyone shoot them, however. The people, he said, did not appear to be fond of such sport. I submit to you this is the very place where a wandering Englishman like ROGER TICHBORNE would have gone for sport; where there was game, and the inhabitants were not in the habit of shooting it. Further on Mr. PURCELL says the partridges came so close that one could have knocked them down with a stick; and he also admitted that the country round Melipilla produced a great deal of corn, and had no characteristics that might be called fatal to game, so that on the whole the facts are greatly in favour of the Defendant's story. I think you will be inclined to believe that Mr. PURCELL, although a very respectable person, has given testimony with regard to that not being a shooting or a sporting country which is not supported on the most solid basis, and that the Defendant's statement cannot be regarded as mythical in the least. Mr. PURCELL also stated that Don CARLOS ANSELMO turned out to be a mythical person; but this is a mistake, arising from his (Mr. PURCELL) being a stranger to the country, for no one can disbelieve that there was such a man, and that CASTRO had mentioned him in some of his letters. There is another thing which I must call your attention to—namely, Mr. PURCELL'S failure to discover an entry on the police-books of the charge against the Defendant and ORTON of horse-stealing at Castlemaine. The Defendant, in the Common Pleas, distinctly swore that he was charged, together with ARTHUR ORTON, at Castlemaine with stealing a horse. It will be said, on the other side, that the object he had in inventing this was to lead people to believe that there he and ORTON were two distinct persons; but why should he have mentioned "horse-stealing"? I think it probable, if no such charge ever was entered at Castlemaine, that the Defendant has confused the place with some other. I tell you, candidly, I can't understand it. Mr. PURCELL was equally unsuccessful in his endeavour to discover an entry of the ship 'Osprey' described by my Witnesses in the Custom-House books at Melbourne. I have no doubt that Mr. PURCELL made an honest search. I have no doubt he felt strongly the justice of the Case for the Prosecution, just as I have a strong feeling in the justice of the Case I represent; but I should not for one single moment suggest that he made a dishonest search; but there can be no doubt that either he has made a careless search or the Custom-House books are at fault. There is no escape from the dilemma, because after the evidence I have produced on the matter, there can be no doubt that there was an 'Osprey.' Unless you are prepared to believe that Mr. RUSSELL and Mr. HODSON are not the Witnesses of truth, you must come to the conclusion either that Mr. PURCELL made a careless search or that the vessel's name had been omitted from the books. There is no wriggling out of the fact that a bigger 'Osprey' than the one Mr. RUSSELL bought was at Melbourne at the time that they were both lying side by side. That there is no record of it in the newspapers I do not care a straw. Besides this account of the vessels lying side by side, we have the testimony of the steersmen of the quarantine boat, who lay by her while the Medical Officer went on board to inspect the papers of the larger 'Osprey.'

The LORD CHIEF JUSTICE: The Prosecution do not deny the existence of the small 'Osprey.'

Mr. Justice LUSH: In fact they proved it.

Dr. KENEALY: Mr. PURCELL said he could find no trace of any but the Carmichael 'Osprey.'

The LORD CHIEF JUSTICE: That is the one.

Dr. KENEALY: Yes; but Mr. RUSSELL says that the one he bought lay side by side with the other and the bigger 'Osprey.' It is thus impossible to escape from this dilemma—either Mr. PURCELL'S search was careless, or the Custom-House books were not properly kept. But if so, what is the value of Mr. PURCELL'S evidence?

The FOREMAN: We know of two 'Ospreys.'

Dr. KENEALY: I am speaking of the 'Osprey' which came in under special circumstances, and whose deck was crowded with sailors. As I recollect, there is only one 'Osprey' in the books.

Mr. TAYLOR (Juror): What was the second 'Osprey? What sort of a vessel was she?

Dr. KENEALY: I do not know. I should have been glad if you had asked Mr. RUSSELL, when he was here, but we do know that there were two 'Ospreys.' There is only one mentioned in the Custom-House books.

Mr. Justice LUSH: Only one in those two months.

Dr. KENEALY: Yes, my lord, only one for those two months, July and August.

Mr. Justice LUSH: It is alleged by the Prosecution that the only 'Osprey' came in in June.

Mr. TAYLOR (Juror): According to the pocket-book he was in Hobart Town on the 15th of July.

Dr. KENEALY: According to the pocket-book—my Client, I should say, was never there in his life. As you have called my attention to the pocket-book, I will just remark that it was acquired in a felonious manner, and the man who would be so base as to keep it to serve his own purpose, and neglect to return it to the owner, is a man who would not hesitate to do a great many other things. (A laugh.) Gentlemen, I spoke of Mrs. MACALISTER on a former occasion to you, and I shall not now touch upon a single point I touched upon then. She was examined on the 9th of July, and like most or all of those other Witnesses, she was a person who could not have had much means of being able to identify ARTHUR ORTON. She saw him once between 1853 and 1856, and then she says the same person whom she saw at that time entered Mr. FOSTER'S service in October, 1856. This lady went away in January, 1857, very soon after ARTHUR ORTON went to Boisdale, and remained away from January to April, 1858; and she was back, she said, two or three months when ORTON reappeared. ORTON seems to have reappeared only for a very short period, and the reason he gave for coming back there was that the place was too lonely after the disappearance of Ballarat HARRY. This ORTON, of whom she speaks, I think you will clearly connect, in consequence of that language, with the disappearance of Ballarat HARRY, and I think you can have no doubt from the evidence of one of my Witnesses, that ORTON was some way or other engaged in consequence of that disappearance. That Witness, to whose evidence I shall have to call your attention later on, had a strong impression on his mind that ORTON had murdered Ballarat HARRY, all of which, if true, bears out the idea I mentioned to you the other day, why I cannot call ARTHUR ORTON. This Mrs. MACALISTER is asked the following significant questions by Mr. HAWKINS:—"Had you a perfect and distinct recollection of the appearance and features of ARTHUR ORTON?—I had. Have you a perfect and distinct recollection of his appearance and features now?—I have."

But there Mr. HAWKINS stopped. Well, MACKENZIE appears to have brought some photographs to this lady and to have told her he was engaged by the Lord Chancellor to take evidence in the Case. It is unfortunate that so many falsehoods, misrepresentations, and equivocations have been introduced into this Case by all those people; but it does not advance Mr. MACKENZIE very highly in my judgment, and I trust it will not in your judgment, that he should have told that lady a deliberate lie in saying he was engaged by the Lord Chancellor to take

evidence in this Case. He showed her a great number of photographs; I have no doubt he remained a long time with her; he seems to have had some interviews with her; the female mind is impressible, and probably Mr. MACKENZIE impressed this Witness with a strong idea that the person whose photographs he was showing her was the person whom she remembered as ARTHUR ORTON. She gives us a kind of indistinct account about the writing of ARTHUR ORTON in that book called "The Rivals," and whether that is his writing or not, you, Gentlemen, must judge. Then, with reference to the disappearance of the name altogether of CASTRO from the books that are produced, she is asked about the number of persons in the employ of Mr. FOSTER, and she cannot give us any real evidence on that matter. Now, bearing in mind the answers this woman has given, and comparing them with the gentleman sitting before me, I ask you whether they bear an atom of resemblance to the Defendant? She describes ORTON as a coarse, clumsy sort of man. The Defendant is a big man, but nothing coarse or clumsy has been seen about him by you or anybody. She says further that ORTON had large feet. You have seen the Defendant's feet, and can judge for yourselves on that matter. Again, she is asked whether he had large hands, and she says she cannot tell whether his hands were large, but that he had a clumsy way of walking. You have seen the Defendant walk again and again, and, as I told you before, there is no clumsiness in his walk; on the contrary, he has possibly as remarkably light a tread as was ever seen for a man five-and-twenty or six-and-twenty stone. Next she is asked, "Did you notice any marks of small-pox on his face?—No. Are you prepared to swear he had not?—No, I am not. You would not undertake to swear whether his ears were pierced or not?—No. Was ARTHUR ORTON a dull, ignorant, and heavy fellow?—Yes, I should say so"—and she adds a little further on, "He seemed a stupid man; there did not seem much intelligence about his face." Gentlemen, you have seen the Defendant for nine months, and you can exercise your own judgment upon physiognomy. Ask yourselves, Is there an atom of resemblance in the Defendant to that description—"A dull, ignorant, heavy fellow"? There is not one atom of that description which would apply to the Defendant. On the contrary, in every lineament of feature Mrs. MACALISTER describes there is decidedly the converse of what you yourselves have seen in this gentleman (the Defendant) in this Court. Now, Gentlemen, you remember that this Witness—though I forget whether it was this Witness or another who was called to speak to an arbitration Case——

Mr. Justice MELLOR: The papers were put in during the examination of this Witness.

Dr. KENEALY: Oh, very well, my lord. The Defendant, Gentlemen, on cross-examination in the Common Pleas, in reference to the arbitration paper which, as Mr. Justice MELLOR reminds me, was put in during the course of this woman's testimony, was asked by the Solicitor-General, "Do I understand from you that there never was a Case between you and Mr. FOSTER as to wages which went to arbitration?" The answer is "Never." He is then asked, "Did you know Mr. FREDERICK WEBB?—No. Now, did he not appear for you?—Certainly not." Could there have been a more formidable Witness than Mr. FREDERICK WEBB, who was supposed to have appeared for ARTHUR ORTON, or for this Defendant? It would have been impossible to call one more formidable. Yet Mr. WEBB is not called. But further, we have this fact, that a Mr. MONTGOMERY was one of the arbitrators, or the umpire called in to decide that question between Mr. FOSTER and ARTHUR ORTON. We have the Defendant distinctly and positively denying he was the person represented by that arbitration paper produced before this woman; we have two names vouched in connection with that, Mr. FREDERICK WEBB, the lawyer, and Mr. MONTGOMERY, who was the umpire; and neither of those gentlemen, whose testimony would be of the greatest possible weight, is called to say, "That is the ARTHUR ORTON for whom I appeared," or, "in whose Case I arbitrated." So much for Mrs. MACALISTER; but I have a word or two to say about the husband. He found ORTON in the employ of Mr. FOSTER in July, 1858, and said that he used to do the butchering. This Witness tells us that the books which are missing were kept by HENRY NORRIS, DURHAM, and MONTGOMERY, and you will remember that out of the first book produced there were no less than 33 leaves missing. There was one leaf gone in particular, for which the Witness could not in the least account. You see the loose way in which the accounts have been kept, and yet you are asked, because the name of CASTRO does not appear in the books with the name of ORTON, to say that ORTON and CASTRO are the same man.

The LORD CHIEF JUSTICE: To what book are you referring—the storehouse book?

Dr. KENEALY: No. It is the book containing the index and the names of the different persons employed by Mr. FOSTER. Well, the Witness says, "I think that the book was used for various other purposes, and leaves may have been torn out for various purposes." All that I say upon that matter is this: The books have not been kept as they would be in the office of a merchant or a man of business. They are evidently books kept in the wilds and bushes in a miscellaneous promiscuous way, and not such as you should place implicit credence upon. As a rule, we know that a book produced from one of our counting-houses or shopkeeper's desk may be as implicitly and thoroughly relied upon as a book from the Bank of England; but I would ask you not to apply the same high standard in judging of books of this nature as you would apply to books of our own. The bottoms of some of the leaves were cut off, you will remember, and I could get no account of how these things came to pass. As to the personal description of ORTON which Mr. MACALISTER gives, he also says that he was an awkward, clumsy-looking fellow, and that he did not look like a gentleman. Another Witness was POUND, but he never spoke to ARTHUR ORTON after he was 10 years of age, and he had no recollection of his voice. SCOWEN is the next Witness. He was a railway porter, and was employed by the Defendant to take a parcel to CHARLES ORTON under the name of BRAND. Now, I put it to you that if the Defendant had had any guilty participation in a fraud with CHARLES ORTON he would have sent some chance person with that parcel who could not have been traced, and not have entrusted it to a man in respectable and constant employment. I ask you to believe that to be an evidence of the Defendant's bonâ fides. As I told you before, it is a perfect mystery, and always will, no doubt, remain a mystery, why this man went to Wapping or why he wanted to give money to those persons. It can only be accounted for by the supposition that in some of their wild expeditions he owed his life to the interposition of ARTHUR ORTON, and the first thing he did when he came to England was, as a matter of gratitude, to seek out his family and endeavour to do for them whatever he could. That is the end of my comments upon the evidence offered by the Prosecution upon the question of ARTHUR ORTON. And now, Gentlemen, having called your attention, in the course of commenting on that evidence, to the description—or rather the absence of any real, specific, and precise description—by those various persons as to what ARTHUR ORTON was, I am going to put before you, before I begin to comment on the testimony I have produced in reference to ARTHUR ORTON, a syllabus of the evidence I have given as to personal appearance and characteristics. This syllabus, in my absence in the country during the last week, has been drawn up for me by Mr. COOPER-WYLD, whose ability, loyal zeal, and assistance to me in this Case since he has entered into it no language of mine is sufficient to describe as they deserve. First of all, Gentlemen, I will call your attention to what was one of the most remarkable characteristics of ARTHUR ORTON—a characteristic peculiar to him, and of which there is not a single atom or trace to be traced in this Defendant. I have called 49 Witnesses, who have spoken mainly to that characteristic, and unless you believe that those 49 Witnesses are either the Witnesses of untruth, or are labouring under some absolute and wild delusion, it will be utterly impossible for you to say that this gentleman is ARTHUR ORTON. That characteristic is the high cheek bones. This syllabus is of more value than any comments of mine on the evidence as it goes, because it will impress on you the fact, in a way you cannot escape from when you come by-and-bye to ask yourselves about the verdict you shall return, that these personal characteristics of ARTHUR ORTON, proved by a large number of Witnesses, are conclusive that the Defendant is not ARTHUR ORTON. The list begins with Mr. PAGE.

Mr. TAYLOR (Juryman): *Is that the gentleman who got the* £500?

Dr. KENEALY: That is the gentleman who lost £250.

Mr. TAYLOR: *I thought so!*

[Dr. KENEALY then read over the list of the names of the 49 Witnesses and the words they used, which were positive as to his having "high cheek bones."] This is a question of identity; it is a question of one man being probably mistaken for another; and if there be one thing upon which these 49 Witnesses are united it is that the ARTHUR ORTON they knew both in England and foreign lands was a man remarkable for high cheek bones. You cannot say all these people are mistaken. It is impossible to come to the conclusion that 49 people would say a man had high cheek bones if he had not. If, then, they cannot be mistaken, and if they are Witnesses to be relied upon, I say the question of high cheek bones, if it stood alone, would establish beyond doubt that the Defendant is not ARTHUR ORTON. High cheek bones are ineradicable and indelible, and a man who has them when he is young has them in his old age. The Defendant has not a semblance of anything like high cheek bones, and I ask you upon that ground, if there were no other, to come to the conclusion that he cannot be ARTHUR ORTON. Now, Gentlemen, the next thing to which I will call your attention is equally unmistakable, equally indelible, and equally ineradicable. I allude to the pierced ears and earrings. On this point no less than 27 Witnesses were examined; 19 out of the 27 swore positively that ARTHUR ORTON wore earrings; four swore positively that his ears were pierced, and some of the rest cannot say whether they remember it or not. The Witnesses, moreover, all say that his ears stuck out from the head, so that they would seem to suggest that he had ears like a kangaroo—(laughter)—very different from those which the Defendant has, which are close to his head. There are all those Witnesses deposing to pierced ears and earrings, and you have it on the testimony of medical gentlemen who have examined the Defendant that his ears never have been bored. Where ears have once been bored, and allowed to close up, there is a kind of hardness. The medical evidence is that the sign of a pierced ear is indelible—it never can be obliterated.

The FOREMAN: I know two or three persons whose ears have been pierced, and no trace whatever is left.

Dr. KENEALY: That is not the medical belief, and I must ask

you to rely upon the medical testimony upon that point. When you seriously consider that fact, as you will everything in this Case, it must make a profound impression upon your minds.

Gentlemen, I have already likened this unhappy man to one who is hunted down by wolves; and the more I think of his case, the more apt the simile seems to be. The wolf acts on instinct, and the same cruel instinct after blood seems to be developed here. They will not give him even a semblance of fair play. They turn his eldest son out of Court; lest all the world might see that his features are cast almost mathematically in the same mould as the features of the undoubted ROGER in 1854.* Yet with all this how eloquent they are upon their love of Right and Justice. To judge of them by their own description of themselves, they are the sole guardians in England of all that is high and holy. Let us see into this remarkable claim. When the GURNEY family involved myriads in ruin, and a thousand widows and orphans cried to Heaven for support, the Government declined to prosecute, and allowed a brave Scotsman, Dr. THOM, of Aberdeen, to do so. But when the Doughty and the Tichborne Estates were in peril, Government took the matter up with a will that we seldom behold. They girded on all their armour. They gave themselves a full year to get up what they considered overwhelming evidence. They muzzled the press, the Defendant and his friends; and if anyone ventured to mention his name in the House of Commons he was at once yelled down. The Emperor NAPOLEON in the plenitude of his despotism could do no more. The STUARTS with their Star Chamber could not do less. They would not allow their conduct to be discussed in Parliament "lest it should prejudice the Case to be tried." Just Men! they were afraid that the Defendant might be injured if it were done. Anxious to reward the honest, a member of the Cabinet gave OATES a valuable employ. TITUS OATES himself was hardly more favoured in his day. They engaged a powerful Bar against this Defendant, whose claims were so ridiculous that they had only to be stated, and to explode. Their Attorney-General modestly declined to lead. He had come like others to a "foregone conclusion;" and he desired to be present only in spirit. Yet Mr. HAWKINS was rebuked almost at the opening of this memorable Trial for having the same feelings of prejudice which were supposed to disqualify his distinguished leader. He had not indeed gone quite the length of that high law officer, and designated the Defendant as "a Conspirator, a Perjurer, a Forger,

MELIPILLA LADIES.

a Slanderer, and a Villain," but I have no doubt he was ready to do so if occasion needed. They ransacked both hemispheres for Witnesses—they lavished gold like water. They knew of the 'Osprey' years and years ago. Innocent guardians of public justice! they thought it was the little Scotch 'Osprey' of some sixty tons; and they rested there, and were thankful. They had read in the printed evidence (page 1432)—

"You have told us about the ship going down, about getting provisions from the long boat, and all that. You were picked up, you think, by the 'Osprey.' What kind of a vessel was she?—A large vessel.

"Larger than the 'Bella'?—Yes.

"From what port did she come?—I don't know."

Yet they appear to have made hardly any *real* enquiry into the existence of such a vessel. Her name was unusual; but this did not stimulate them. They fancied that all that was necessary was to put a Cabinet Minister into the box to depose to what we now know was—well—"a mistake"—I mean as to the gold fever

* This was done by the Lord Chief Justice. Mr. ONSLOW had frequently asked Sir ROGER to bring the boy into Court, so that this marvellous resemblance should be witnessed both by Judges and Jurors. On this point Mr. ONSLOW afterwards sent the following note to the ENGLISHMAN newspaper:—

MR. ONSLOW AND SIR ROGER TICHBORNE.

"I send you a copy of a letter I received from TICHBORNE when I asked him to bring his eldest son into Court, one day during the Trial."

34, Bessborough-street, S.W., June 14th, 1873.

DEAR ONSLOW,—Do not trouble about anything of that sort. It will only make people think I want to win by causing sympathy, and not on the merits of the Case. Now that is not so. I will win on its merits, or not at all.

I have some very bad news for you. I have lost my dear little pug. I called her TISSIE, and she was the life of me in my idle hours. She was so beautiful. She died last night of distemper. It serves me right, for I was offered fifty pounds for her and refused it, when I needed it so much. Do you think your kind sisters will some day give me another, if they have one to spare? You try and get me one, will you, and I will promise never to blow you up any more. With kind regards to Mrs. ONSLOW, I remain, dear ONSLOW,—Yours truly,

R. C. D. TICHBORNE.

Dr. KENEALY having been informed by Mr. ONSLOW, during the Trial, of this absurd delicacy of the Defendant, urged upon him to let the boy come to Court, and the moment he came the Lord Chief Justice ordered him to be turned out. Dr. KENEALY saw the Defendant a few moments after this was done (he having left the Court to see some persons), and never will he forget the indignation with which Sir ROGER narrated the insult. He quivered all over with passion, and tears stood in his eyes. It was the second occasion on which he ever saw him under an excited temper.

and those infallible port regulations, which were never more perfect in Melbourne than in the memorable year '54. They called Witnesses to swear to what we now know was wrong; namely, that there was no 'Osprey' in that harbour in the year when the Defendant declares that he landed there with the 'Bella' crew. As it was never yet known in the varied history of human nature that anyone had behaved like this Defendant, they calculated on an easy victory; and yet they took such precautions as are used only in cases of vaguest doubt. In generous natures the miserable and almost innumerable disadvantages to which this Defendant has been subjected would have excited sympathy. If *truth* were really the object which they had in view, they might have done so; but I think that *victory* alone has been their aim. You yourselves have seen many of those disadvantages. You have seen me put Witness after Witness into the box, without my ever having read a word of their evidence—the proofs being handed to me, after the Witness was sworn. Whether this was accident or design, I will not now speculate. If, under such circumstances, I have made out that complete answer that I contend for, what might I not have done under auspices more favourable? Witnesses have been sprung upon me by surprise. Documents have been slipped in, which I knew not of——

The LORD CHIEF JUSTICE: That was your own fault. Why did you not object?

Dr. KENEALY: My lord, the manœuvres were so rapid, that the thing was accomplished almost in the twinkling of an eye: and before I knew what was coming. No Counsel can be in a perpetual state of watchfulness. The most vigilant sentinel needs some repose. Nor does one *always* anticipate that something unfair is to be done.

The LORD CHIEF JUSTICE: I have seen nothing of what you say.

Mr. Justice MELLOR: Nor I.

Mr. Justice LUSH: None of us.

Dr. KENEALY: Oh no, my lord. I did not say that you had. But I unfortunately have felt much of it. But to resume. There have been objections raised here that I was unprepared for: to say the least, they have been unusual. In addition to which most valuable evidence has been shut out by rules of law: and we have had to contend day by day with false summaries in the papers which are calculated to prejudice all who read them. All these things have stood Mr. HAWKINS in good stead: and he has been mirthful during a good deal of this Trial. But it seems to me that I should not err if I reminded you of a great play—"Othello"—a tragedy, even as this is. In that sublime epos, *Desdemona* is made the victim of circumstances. Her own unwisdom causes her ruin. She is in the hands of the unscrupulous *Iago*—a villain fired by ambition and revenge. He can be merry and sing his song: and his joke is ever ready. And yet is there one of us who does not re-echo the prayer of Emilia?

> "O heaven! that such companions thoudst unfold
> And put in every honest hand, a whip
> To lash the Rascal naked through the world."

[It being four o'clock, the Court now adjourned]

ONE HUNDRED AND FORTY-SEVENTH DAY.——TUESDAY, DECEMBER 30TH, 1873.

Mr. Justice MELLOR said: I am sorry to say that the Lord Chief Justice is not very well this morning, but he hopes to be here towards the middle of the day.

Dr. KENEALY resumed his address to the Jury. He said: May it please your lordship, gentlemen of the Jury—I now direct your attention to the evidence which was given in reference to the hair of ARTHUR ORTON. The Prosecution have suggested a theory that the Defendant is in the constant habit of dyeing his hair, but the evidence of Mr. ATWELL has effectually destroyed that theory. Now, no less than 66 Witnesses have spoken to the hair of ARTHUR ORTON on behalf of the Defence, and 16 on behalf of the Prosecution. Of the 66, 35 say it was light hair, and I think you will be of opinion that it was hair of a remarkable colour; 4 say it was fair, 6 flaxen, 6 sandy—all giving the idea of extremely light hair — 1 says it was ginger, 1 amber, 3 auburn, 1 white, 1 light yellow, 26 light brown, 2 brown, and 1 not red. So much for colour. Some say it was curly at the end, some that it was straight, but the great body of the evidence justifies me in saying that it was very light-coloured hair. Dr. KENEALY then read a summary of the evidence given on the subject, which was as follows:—

"W. S. PAGE: ARTHUR'S hair lighter than Defendant's several shades. Something like that young man, the second standing there (pointing to a man in Court) —I should call it light hair, very light. Not unlike the curl (produced); similar in colour. Just under the cap slightly curled, but very trifling; only the ends. I am inclined to think it curled outwards.—J. C. SALLAWAY: Light hair, flaxen, but silvery, almost white; very light. Inclined to be curly.—J. FINNIS: Light sandy, light brown.—J. WISER: Lightish, bright light hair.—W. WESTON: Hair of ARTHUR similar to his brother CHARLES. Not in the least curly, with the exception when it was long it might turn up through the pressure of the cap. It was not inclined to be curly. There was so little curl that I did not notice whether it was curly or not.—J. YEATES: Rather light hair. It was long. I do not suppose he ever put a comb into it once a week. It did not curl, not a bit. Very straight. No curl at the time. Rather lanky hair, long and straggling.—J. J. BILLING: He had light hair, perfectly straight.—H. STEER: Light brown. It was lighter after he went to sea the first time. It got a little darker. When I first saw him his hair was very light.—G. CASE: Originally light auburn, it was turning dark on the last occasion I saw him.—W. WEBB: Dark auburn.—C. DIX: A light brown.—J. HAYWARD: Very light.—A. BUSH: Very white.—J. COCKSHOTT: A lightish brown.—E. KEMMINOE: Rather inclined to be a light brown, but not very much. Middling. Not very light.—W. JARVIS: Light. I should say light flaxen. Something of that description of hair. In 1851 it was a little darker when I saw him then. Not particularly short. I did not say it was curled, I think it was straight. I do not remember. I will not swear whether it was curled, or whether it was not.—THOS. GRADY: Hair was light; a light sandy colour.—E. LANCASTER: Light hair. I do not know if you would call it brown. Not curly. I should not call it light brown, but then his hair was something like my own. I should not call mine a light brown. He had light hair. I say light hair. I should not call it a light brown. As a boy quite light. It was rather darker as he grew up, but quite light as a boy. When I knew him twenty years ago it might have been a trifle darker. I daresay it was about that time, but still he had light hair.—R. CHAMBERLAYNE: His hair was rather brown. Yes, or a near colour of my hair, a light brown. Perhaps a medium.—Mrs. SCOTT: In 1852 his hair was fair.—J. MANNING: Light-coloured.—J. SEARLE: Light hair; rather lighter than mine of the two.—J. J. LEAVER: It was lightish hair.—G. WEEDON: Very light hair—kind of light yellow, indeed; very fair. There is nobody with such fine hair as he has got.—Mr. MYERS: Light.—J. WESTMORELAND: Light brown. Sometimes it was very rough. If he was without his cap it would blow up. He had a rough head of hair. It was rather wiry. The ends would curl behind when he had his cap on, and when he had his cap off the ends would be a little curly. It curled a little out. Outwards.—AGNES CASTON: It was light, light flaxen, lightish brown in 1851. It was lighter when I saw him in his childhood. In 1851 it was rather darker; it was still a light brown, not quite a flaxen, a darker brown. In 1851 his hair had grown darker.—R. H. MOORE: A light sandy hair, 1852, not red. A sort of brickdust colour, the colour of a light Bath brick. Ordinary length.—H. DUNN: His hair was a little light, but then you must recollect butcher's hair is always well greased. They seldom wear caps. J. BENTLEY: I believe it was light.—H. RUSSELL: His hair was light and used to hang down straight.—E TULLY: Light. Light sandy hair.—G. CHAMPION: His hair was a light brown. I consider it a light brown, as near as I can recollect.—JAMES BEGG: Fair. Not carrotty, but between fair. Fair hair of a flaxen colour.—JOHN SUN: Rather inclined to be a sandy colour.—R. G. WALDUCK: Rather a light sandy colour.—JAMES BRUNSDEN: A light brown I call it. It had got no darker, not a bit, when he came back from sea.—JOHN WOOLNOUGH: In 1859 or 1861, fair hair. J. DYKE: His hair was long—a lightish brown. He had long hair.—C. JANES: His hair was light.—W. HAYDON: Light hair—lighter than mine. Long hair.—M. SMART: His hair was light, inclined to be light—a very light brown. J. MARSHALL: A very light brown.—H. POWNCEBY: Light hair, very light hair, not carrotty, but light, straight flaxen you may call it, a soft flaxen nature. Rather wiry and straight, not curly. Very little curl in it.—H. PALMER: Very light, very light sandy colour. Very light. More flaxen than sandy.—W. PHILLIPS: I think he had brown hair. I should think it was brown. I could not swear to the colour precisely.—WM. SIBSEY: Rather light hair.—A. COCKLIN: Fair hair, inclined to curl at the time.—A. E. PAVIS: Light brown hair.—THOS. TREVITT: His hair was light brown. His hair was light brown. It curled, not particularly long, but it curled up just round the ends. Yes, only about his ears—both ears. His hair curled a little at the sides.—R. GARDENER: Rather light, if I remember right. To the best of my recollection it was very long then (at Castlemaine). No, I never knew it to be curled. Not to my recollection. Generally long and straight. Long and straight hair when I saw him in Wagga-Wagga.—CH. PERRY: Light brown hair, or light auburn. There was no curl about it. It was long, straight hair. No tendency to curl that I noticed. I am quite sure.—D. COTTON: Light hair.—T. NEWMAN: Light brown. It did not curl. Straight hair. Lightest brown hair. Not very light.—G. HICKMAN: Light brown.—WM. POLE: His hair was a shade lighter than mine—light brown, or something of that sort. Hair in shade lighter than mine. Middling long. It came down to about here (describing).—EDWARD LOCK: He grew long hair, but it was thin just across the top of the two eyes. He could not have done it anywhere else, on account of the hair that ARTHUR ORTON used to wear just across the forehead. Light brown hair.—G. JONES: Light hair. Light hair. I never perceived any curls in it. I think if it had had

curls I must have recollected it, but I have no recollection that he had any curls. It did not hang down to cover the collar of the coat.—A. COLLINGRIDGE: To the best of my recollection it was light brown.—J. WOODYATT: Light brown colour.—B. WARD: A ginger or amber; if anything, lighter than what his beard and moustache were—ginger.—MARY BUNNIDGE: Lightish hair.—J. STORY: Light hair.—THOS. KING: Something of a brown—rather a light brown.—H. BARTLEY: It was lightish hair. It was rather lightish hair.—G. H. V. SHEPHERD: I should call it a light brown."

Gentlemen, so lately as 1861 you have ORTON'S hair described by those who saw him in Australia as very light hair, and the evidence substantially agrees with that given by the Prosecution, and you will, I think, be inclined to believe that ORTON'S hair could never have attained the rich dark brown colour of the Defendant's hair. The testimony of Mr. ATWELL sets aside the theory that any artificial means have been used to bring about that colour. I submit, that that is another and almost conclusive proof that this man is not ARTHUR ORTON.

Gentlemen, I shall now call your attention to the evidence as to the hands of ARTHUR ORTON. Fifty-five Witnesses speak as to them. Of these fifty-one say that ARTHUR ORTON'S hands were big; one says they were big and sizeable; seven that they were big and brawny; two that they were shoulder of mutton hands; four describe them as fleshy; two as bony; four as long; one as rough; one as broad; one as horny; two as clumsy; and two as thick. The whole tenor, therefore, of the evidence gives the idea of a man who had very large hands. Their testimony is as follows:

"WM. S. PAGE: He had the largest hands I ever remember seeing on a boy. Knuckles not dimpled, as I am aware of.—G. C. SALLAWAY: Large hands. Has felt them.—JOHN FINNIS: Very large hands. Very deep scar across his left hand, inside. We used to compare them together—across the palm. Hands were large enough to catch and hold a sponson-piece, which he did on one occasion, and saved Witness's life.—P. GODHART: Very large fleshy hands, not fat.—J. YEATES: Big hands.—J. WILLIAMS: He had a good brawny hand for a lad used to handling a scull.—J. BILLING: Hands were also large.—H. STEER: He had a very large hand. I have a large hand, but it is nearly double mine—it is a shoulder of mutton fashion. Yes, half as big again as mine.—GEORGE CASE: Large, bony hands.—WM. WEBB: Very large hands—remarkably large.—C. DIX: Larger than the Witness's; larger thumb than myself, and mine is not a very small one.—J. HAYWARD: Very large hands, fleshy.—J. BUSH: Big hands. I used to compare mine with his. I have very small hands.—A. BUSH: A long, bony hand.—J. COCKSHOTT: His feet and hands were alike, as you may say. He had a good sizeable hand for a boy; still he was a bony boy. In 1851 his hands were big; quite sizeable hands. Quite a sizeable hand; a good deal bigger than what mine is. I think the right hand was larger than the left hand if there was any difference. ARTHUR had a big hand.—ELIZ. KEMMINOE: Hands very large. He had very large hands.—WM. JARVIS: Large-sized hands.—T. GRADY: They were very large indeed. They were termed in Wapping a shoulder of mutton fist of hands. Half as big again as Defendant's. They were shoulder of mutton hands. I have noticed myself in particular his hand being very large.—ELIZ. LANCASTER: Large hands.—R. CHAMBERLAYNE: Large. Larger than mine.—J. MANNING: He had very large hands for a lad. Very thick, coarse-set fingers. The fingers were rather long for a lad of his age.—J. J. LEAVER: Very large hands.—G. WEEDON: big hands. Very big hands for his age. WM. MYERS: Large hands, very large.—J. WESTMORELAND: A larger hand than I have got. I have a very large hand (exhibiting). I did not see any marks on it.—AGNES CASTON: When he was a child he had very large hands.—JOHN PELLS: Rather large inclined and rough. ARTHUR ORTON'S fingers got to be a great deal longer than those.—J. RUSSELL: He had large hands, because he has taken fish from me. I have given it to him into his hands when his father has bought them. Broad and horny. Broad hands.—E. TULLY: His hands when he first came back from America were as big as mine are now. He had very large hands.—GEO. CHAMPION: Clumsy hands. The greatest clumsy fingers and hands I ever saw a young man have.—J. BEGG: Very large, like mine. I have large hands. Almost the same as my own—very large and fat. He had a fat hand as a boy, before he went to sea.—JOHN SUN: Rather long.—R. G. WALDUCK: He had a particularly large hand. A thick, clumsy hand—broad. JAS. BRUNSDEN: Very large hands—long.—C. JANES: A very large hand.—W. HAYDON: He had a large hand. Large hands.—M. SMART: Not a very small hand. Rather a large hand.—H. POWNCEBY: He had large hands—very large hands. Thick, fleshy hands.—H. PALMER: I am inclined to think as he was a stout lad, he possibly had a largish hand.—WM. SIBSEY: Big hands. Large hands.—A. E. PAVIS: Large hands.—THOS. TREVITT: His hands were large.—CH. PERRY: Large hands.—T. NEWMAN: His hands were very large.—G. HICKMAN: Large hands.—Wm. POLE: Large hands. A great deal bigger than mine—half as big again. His hands were a little bigger than mine. His hands were big in proportion to his size.—ED. LOCK: Large hands.—G. JONES: Large hands.—A. COLLINGRIDGE: Large hands.—J. WOODYATT: Large hands.—B. WARD: He had very large hands.—Mary BUNNIDGE: Big hands.—THOS. KING: Very large hands.—H. BARTLEY: Rather large-sized hands.—G. H. V SHEPHERD: Large hands, because on one occasion I had to fight him."

By the next transition, Gentlemen, we come to the evidence as to ORTON'S feet, which are spoken to by 51 Witnesses. Of these 47 say that they were large; 5, that they were broad; 3, that they were long; 5 call them clumsy; 2 call them awkward; 9 say he was flat-footed; 6 speak of him as being splay-footed; 1 called him duck-footed; 2 say that his right foot was awkward; 2 that it turned out; and 2 that his left foot turned out. Now here is a man with large, broad, splay feet, noticeable to everyone who saw him. Compare that description with the feet of the Defendant, which you have seen, and with the boot in Court, which by no possibility could have fitted the man so described, and ask yourselves whether all these things are not unconquerable? whether it is possible for any man or men—even the Prosecution themselves, with all their prepossessions—ever to surmount them. Therefore it is, that from the very beginning, I have spoken of the facility with which I should be able to destroy the ORTON theory. Like the tattoo theory, it gave me no concern whatever.

Mr. TAYLOR (Juror): It is said by the Witness GRADY that ORTON had a spring in one foot.

Dr. KENEALY: No doubt—two of them do. My contention is that this Defendant, like ROGER TICHBORNE, has a spring in each foot, and walks with a remarkably light, elastic, springy step. The evidence as to ORTON'S feet runs thus:

"WM. PAGE: He had the largest feet I ever remember seeing on a boy. They were large in every way; long, and if I may use the term, flat-footed; not the spring in the feet that there is with many men; flat in the middle; a bad tread, particularly the right foot. In-kneed slightly. What is generally called splay-footed. No springing instep. A wonderfully large foot.—G. C. SALLAWAY: Large, long, and broad. Clumsy feet.—J. FINNIS: Very large feet. We used to chaff him about the street being made larger for him, so that he could go along. He used to spread them out. No inclination of the knees so as to take them out of the straight leg. He was splaw-footed.—P. GODHART: Very large.—J. WESTON: Very large size, what we call 11's in size.—J. YEATES: Very large feet for his age.—the largest I think, I ever measured or made. His size was 10's. It was broad as well as long.—J. WILLIAMS: Large feet and flat-footed.—J. BILLING: Large flat foot.—J. YEATES, recalled: Oh, he has a flat foot for all that. No, not exactly a wide foot. A sprawling foot. A large splaw foot, and flat.—H. STEER: He had some very large feet. I have a large foot, but he could not get my shoes on. He once tried to get mine on.—GEORGE CASE: Rather large. I should say very large.—WM. WEBB: Very large, clumsy feet. Broad and long.—C. DIX: Witness used to wear 9's. ARTHUR'S were longer.—J. HAYWARD: Large.—J. BUSH: Broad and long. His shoes appeared to be large.—ABRAHAM BUSH: Very flatty feet. Flat and long. The left was out, turned out one way, the other not. One knee a little knocked.—J. COCKSHOTT: His feet and hands were alike as you may say. His feet and hands were in proportion. His feet and hands were not out of the way of a common boy. His feet were large. I mean to say there were not many boys about the neighbourhood at that time who had such feet and hands. They differed in the feet from other boys, were bigger.—ELIZABETH KEMMINOE: His feet were very large. Flat-footed rather, he was. He had no bend in his foot when he walked. He walked very flat-footed.—THOMAS GRADY: He had a peculiar large foot, and very peculiar feet they were. He lifted the feet. He did not seem to have any spring in the middle, and consequently——[The Lord Chief Justice: That does not apply to both feet; only to the right foot]. Well, there may have been a peculiarity in the other foot, but that was most remarkable. He walked flat-footed. His feet went down flat. He turned in the right foot, but I could not positively say. I think the other one turned the other way; I think so. I could not positively say to that. He walked flat-footed. He lifted his right foot up, and went down flat with his foot. That is the right foot. With the left he walked differently altogether.—R. CHAMBERLAYNE: His feet were large. A very large foot for a young man.—Mr. SCOTT: According to the size, I thought his feet were large.—J. MANNING: He had what the lads used to term a flat foot. Yes, he was what we used to term flat-footed. More especially the right foot. They were large feet, because when we lads have been bathing together I have put on his boots, and could get both my feet into one of his shoes—well, in a manner of speaking, my lord. Well, I have put his on, and they have gone slip-slop. Well, his boot was too large. The right foot was flatter than the left. It was not a deformity. The foot was out of shape; it seemed to be when he put his foot to the ground it used to come flat altogether—no hollow—no bend. You could in the walk see a difference between the left and right foot.—G. WEEDON: Big feet.—WM. MYERS: He is what is called splaw-footed. Large feet.—J. WESTMORELAND: Large feet.—AGNES CASTON: As a child his feet were very large.—JOHN PELLS: Big feet. What we term splaw-feet—inclined to turn out. The right foot more than the other.—J. BENTLEY: His feet were very clumsy.—J. RUSSELL: I knew that he had large feet. Yes, it was a clumsy foot as far as I can recollect—and the father's feet were large as well.—E. TULLY: Very large. His feet were very large.—G. CHAMPION: Clumsy feet. The most extraordinary feet. I have sometimes

mentioned to masters of vessels, 'What splavines,' just making use of a seafaring term we have, that ARTHUR ORTON had got large feet.—J. BEGG: In comparison with his hands, very large. —JOHN SUN: Rather awkward about his feet.—R. G. WALDUCK: His feet put me in mind of an iron slab—there was no bend when he put his heel down to the ground, with a bend of the foot, there was none in his. It went down flat, and came up the same. No bend in the neck of the foot I should term it.—JAMES BRUNSDEN: Large feet. He used to sprawl about and slip down when he was sweeping out the stable.—C. JANES: Very large feet.—WM. HAYDON: His feet were large.—J. MARSHALL: Very large feet. He wore large boots—10 size.—H. POWNCEBY: Very large spread feet, long and broad—very large. I recollect his putting his foot on the iron step of the chaise. I generally saw that he had large feet. I noticed he had big feet—H. PALMER: Heavy about the feet. They were large feet. My attention was drawn to his feet. I am certain he had large feet.—WM. SIBSEY: Big feet. Large feet.—A. E. PAVIS: Large feet.—THOS. TREVETT: His feet were uncommonly large. He turned one of his feet out pretty much.—CH. PERRY: Large feet. What we call splay-footed or stray-footed.—T. NEWMAN: Very large feet. Yes, extraordinary large feet.—G. HICKMAN: Large. He had big feet.—WM. POLE: Large feet. He had large feet. Noticed them when we were bathing together in the Loddion.—EDWD. LOCK: Large feet.—ED. JONES: Large feet.—J. WOODYATT: His feet were in proportion to his body. Large feet.—MARY BUNNIDGE: Big feet.—THOS. KING: Very large feet for a young man—flat-footed, what they term, the common-place duck-footed."

I submit that the evidence with respect to the feet is as a cannon ball to a little pistol shot. It is overwhelming. You have a boot made for the Defendant in Court, and I hope you will examine it, as you have not had the opportunity which I offered of inspecting the Defendant's feet for yourselves. Is it possible that thick butcher's boots could alone—if the feet in them were not large—make the impression on thirty or forty people, which was spoken to by the Witnesses? The voice may change, but a great splay foot, such as ORTON had, never could change into the feet you see every day before you. He never had the high instep which you see, and which is generally supposed to betoken high blood and high birth. I say, then, the evidence proves as incontestably as the laws of light that this man is not ARTHUR ORTON.

I have now to call your attention to another most important branch of the Case, as to which seventy-four Witnesses have been examined. Of these, thirty-six say that ORTON was a big, large man. Now the Defendant is not a big, large man. He is a stout, fleshy man; but big and large indicate big bones and brawny muscles. Eleven say that ORTON was a big built man, with large limbs. Twenty say that he had large bones. Twelve that he was clumsy. Six that he was awkward. Three that he was burly. Three that he was broad set and rough looking. Four that he was lazy, hulking and slovenly. Two that he was ill-shaped. Four that he was muscular. Two that he was strong. Five that he was raw-boned, giving you the idea of a powerful, muscular man. Five say that ORTON was overgrown at 15, that he was tall at 14, that he had a large head; two that he had a red face; and six that he had beetle brows—the very opposite of the Defendant's arched, movable eyebrows. Four Witnesses speak of ORTON as having a vulgar look, two as having a stupid look, and one as having a sullen look. Not one of the adjectives used by the Witnesses—"vulgar," "stupid," "sullen"—applies to the Defendant. As it was in ROGER TICHBORNE so in the Defendant—his prevailing characteristic is pensiveness—a melancholy which it is at times painful to look at. The man's complexion is the reverse of light. Even if he were able to disguise his hair he could not by any art known give himself that dark saturnine complexion which he has. If he were ORTON he would have the light clear complexion which is always associated with bright sandy hair. One Witness said that ORTON had broad hips, and I have already pointed out the extraordinary affinity of this Defendant's hips with those of ROGER TICHBORNE. He has no hips at all compared with his bulk. The very names that were given to ORTON are inapplicable to the Defendant. He was called "Fat ORTON," and that would apply to the Defendant; but the other names would not. By one Witness he was called "Clumsy ORTON," by another "Slobbery ORTON," by eight "Bullocky ORTON." The ORTONS, according to another Witness, were called "The buffalo breed." One Witness said ORTON had a big head, and another that he had a fat head, and neither big nor fat could by any possibility apply to the head you see before you. One Witness spoke of ORTON as having a villainous look, and I can well believe he had if it be true that he murdered Ballarat HARRY. It is clear from the evidence of MARSHAL, PALMER, PHILLIP, and GARDINER that ORTON was a hulking fellow.

Mr. TAYLOR, Juror: Is this the Witness who speaks of his being able, when riding over a tract of smooth ground, to pick up a sixpence by stooping in the saddle?

Dr. KENEALY: Yes. I will read you what the celebrated MONTAIGNE says on the subject. I am afraid if my Witness said the same thing you would not believe him:

"I have seen a man ride with both his feet upon the saddle, take off the saddle, and on his return take it up again, refit and remount it again, riding all the while at full speed; having galloped over a cap, make at it very good shots backward with his bow, take up anything from the ground, setting one foot down and the other in the stirrup, with twenty other ape's tricks which he got his living by. There has been seen in my time, at Constantinople, two men upon a horse, who in the height of his speed would throw themselves off and into the saddle again by turns, and one who bridled and saddled his horse with nothing but his teeth; another who, betwixt two horses, one foot upon one saddle, and another upon the other, carrying another man upon his shoulders, would ride full career, the other standing bolt upright upon him making excellent shots with his bow; several who would ride full speed with their heels upwards, and their heads upon the saddle betwixt the rows of scimitars fixed within the harness. When I was a boy the Prince of SALMONA rode a rough horse at Naples, holding reeds under his knees and toes, as if they had been nailed there, to show the firmness of his seat."

So that one may believe almost anything can be accomplished in equitation by persons who make it one of their hobbies.

I take leave to say, therefore, with all submission to you, that there is not a single characteristic mentioned by these Witnesses which accords with the characteristics of this Defendant. On the contrary if a person sat down to draw a picture the very opposite of the man here described, the Defendant would be the gentleman represented. I have with me a syllabus of the evidence of the Witnesses called by the Prosecution to speak to the personal appearance of ARTHUR ORTON. They were forty-nine in number, and of them fifteen say that he was stout, nine that he was big, two that he was awkward, one says he was tall, one that he was coarse, one that he was clumsy, one that he was not stout—though fifteen say he was—one that he was loose and sluggish, one that he was strong, one that he was sprawling, one that he was fair, one that he was nice looking, one that he could not look you straight in the face, one that he was round-shouldered, one that he walked awkwardly, three that he was in-kneed, six that he was called "Bullocky ORTON," one that he was known as "Fat ORTON," one that he was called the "fat boy," and one that he was styled of "buffalo breed." As to his weight, one says it was 13½ stone after his return from sea. Thus in the general description given by the Witnesses called for the Prosecution, there is a remarkable likeness to the description given in the evidence for the Defence, and the evidence on both sides may be summed up in this way as going to show that ORTON was a tall, powerful, bony, muscular, loose-made man of great roughness, coarseness, and clumsiness of manner and appearance—one of those fellows who go about like ill-natured giants, not caring who may be in their way, and prepared to walk over all who do not leave them a clear passage. This, I submit, is the idea of what ORTON was, which you will have in your minds if you put any credence in this immense body of testimony. I ask you to contrast everything you have seen from day to day about the Defendant with the description of ORTON I have given you; and then to put the question to yourselves, "Is there any likeness whatever between the two men?" I have great confidence as to what your answer will be. You will bear in mind that the first Witnesses we called in this Trial were the two respectable men at the Horse Guards whose duty it was to measure recruits; namely, Sergeant FORRINGTON and Sergeant SNELSON of the 1st Dragoon Guards. On the 15th July, in the present year, they measured the Defendant, and in the Witness-box the first of them said he performed the operation with the greatest care by the common standard, and took care to see that the Defendant stood fair. The result was that the Defendant was found to be 5 ft. 9 in. in height. In cross-examination, this Witness said he could get the accurate height of a man, however fat he might be, and however he might try to deceive him by stooping. A man, he said, could make himself an inch or two shorter by stooping down, but he would be found out. If the Defendant had endeavoured, by taking an unusual amount of exercise, to render himself shorter for a time, he must have been found out, judging from the number of Detectives by whom he was perpetually surrounded. We have from the Horse Guards the exact height of ROGER TICHBORNE when he joined the Carbineers, namely, 5 ft. 8½ in., and we know that ORTON was 5 ft. 9½ in. in height from the evidence which traces him up to the period when he was last seen, at which time he is said to have been 6 ft. If you believe that ARTHUR ORTON was, or is—because I don't know whether he is alive or dead—6 ft., this (pointing to the Defendant) cannot be ORTON, as his undoubted height is only 5 ft. 9 in. No less than 37 Witnesses speak to the height of ORTON. One of them says he was 4 ft. 10 in. when first he knew him; the next says he was 5 ft.; another that he was 5 ft. 6 in.; four say he was 5 ft. 7 in. when they knew him; five that he was 5 ft. 8 in.; seven that they knew him when he was 5 ft. 9 in.; three when he was 5 ft. 9½ in.—that would appear to be the time when he was measured on board ship—twelve say they knew him when he was 5 ft. 10 in., two when he was 5 ft. 10 in. or 6 ft.: and one swears when last he saw him he was 6ft.

The FOREMAN: These are merely estimates.

Dr. KENEALY: All except in the case of Sergeant FORRINGTON. We are bound, however, to consider whether these estimates are reasonable or not, and when such a number of people are collectively giving you the same idea in this way, I ask you, and that with confidence, to come to the conclusion that ORTON was a taller man than the Defendant. He could not

have made this impression upon the minds of so many people unless he had been a taller man.

The FOREMAN: Height you know is always over-estimated.

Dr. KENEALY: Yes, sir; that is likely to be correct, but almost as accurate a standard as the appearance to judge men by is their manners and habits. The manners and habits of this fellow, ARTHUR ORTON, are described by thirty-seven Witnesses who have been called on the part of the Defence. Five of these say he was ignorant, of no education, and no polish. Nine say he was dull, not smart, and stupid. One even goes the length of saying that he noticed so much eccentricity about him that he believed him to be cracked. Three say he was not dull. Two say he was clumsy and slovenly—and I need not tell you that when once a person gets into slovenly habits he rarely loses them. Four say he was a scamp, lazy, and would not work; one says that he could not read or write—that characteristic is hardly applicable to the Defendant, as you know, for while he has been here in Court he has scarcely done anything but write; indeed, if his letters were collected they would fill a large space in a museum. One says he used to lisp, five say he used bad language and oaths, and two say he was not a fly-fisher, nor a pigeon-shot. Other characteristics are spoken to, but I will deal principally with those I have mentioned—namely, coarseness, idleness, and ignorance. [The Counsel then read the evidence on these points of the Witnesses who were referred to in the syllabus.] There has been no attempt made to prove coarseness of language on the part of the Defendant, although the Prosecution have had the opportunity of cross-examining many who are well acquainted with him, and have had every opportunity of forming an opinion as to his manner and habits whilst he has been in England.

I will now call your attention to other peculiarities that ARTHUR ORTON had. Thirty-four Witnesses speak to his mouth and jaw, and his overhanging lip. Ten say he had a large mouth, and twelve that he had thick lips—you must judge, Gentlemen, whether this description equally applies to the Defendant. Sixteen say the upper jaw protruded, nine that he showed his front teeth, and some others speak of his slobbering; but I will not go into that, as I wish to confine myself now to the peculiarities about the jaw and mouth. Again, I ask you to believe, from the evidence as to these extraordinary peculiarities, that it is absurd to suppose for a moment that the Defendant is ARTHUR ORTON.

A good deal was attempted to be made by Mr. HAWKINS, on the question of the neck of the Defendant. It was attempted to

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assimilate it in some respects to the neck of ARTHUR ORTON. On that question seventeen Witnesses spoke, and thirteen of them say that ORTON'S neck was a medium one—neither long nor short—three say it was an ordinary one, one says it was chubby, three that it was thick, one that it was large, one that it was low, two that it made him look round-shouldered, one that it was set forward, one that it made him stoop, one that it was straight. So that the general tendency of the evidence of these Witnesses is that of the thirteen who say that the neck was of a medium length. I should not, therefore, be wrong in inviting you to believe that there was nothing remarkable about the neck of ARTHUR ORTON. If you come to that conclusion, you will probably lose a great many false ideas that may imperceptibly have been infused into your minds by Mr. HAWKINS in this matter of the neck. I leave you to form your own opinions whether this description I have alluded to accords with the appearance of the Defendant's neck?

A good deal has been said here upon the question of the nose of the Defendant, and seven of the Witnesses whom I called speak as to the nose of ARTHUR ORTON. Four of them say it was a large nose, one that it was prominent, and the others that it was not very prominent. I think from this you would right in coming to the conclusion that ORTON'S was a large nose and in harmony with the large head, full mouth, and coarse features which we know he possessed. Nature would not have put on a man like ORTON such a moderately-sized nose as the Defendant has.

I now call your attention to another remarkable peculiarity that distinguished ARTHUR ORTON, and that is the scar on his cheek. Thirteen of my Witnesses were examined on the question of that scar, and eleven say it was a scar on the left cheek, one says it was on the right cheek, and one said he did not notice it. We may dismiss the last Witness as not of much value, because people who do not notice things cannot give any evidence about them. A scar is indelible, and this Defendant has not one on his cheek; therefore I say if you believe my Witnesses he cannot be ORTON. With regard to certain discrepancies in the evidence of these Witnesses—for instance, one saying that the scar was on the right cheek and another stating that it was on the left—I submit that, so far from damaging my Case, it shows there could not have been a conspiracy, or they would have all agreed. Besides, the details of the scar are not

so important to me as the fact that there was a scar on ARTHUR ORTON'S face. Rebutting testimony was given by the other side on this point, but, as I showed you, the Witnesses who denied that there was a scar on ORTON'S face knew very little about him, had scarcely ever spoken to him, and certainly were not likely to know as much about him as the Witnesses whom I called. I ask you to believe that the Witnesses for the Prosecution on this matter were mistaken.

There was another peculiarity on the person of ARTHUR ORTON, namely, a scar on the hand. Three Witnesses speak to this, and I say three with emphasis, as the fact of there being such a small number of Witnesses to prove an important point goes to show the genuineness of the Defence. This scar on the hand is a matter with regard to which the Witnesses cannot be mistaken, as they possibly might with regard to the neck, and you can only reject it on the ground that it is false. The scar must have been either seen or invented, and I ask you to believe that the latter hypothesis is not sound, and that these Witnesses were the Witnesses of truth; and if you do believe this it puts an end at once to the ORTON theory.

Another crucial test, Gentlemen, is the small-pock marks, and it is a singular thing that there should be so many peculiarities sworn to in ARTHUR ORTON that have no existence in the Defendant. I do not like to say it, but really it would seem almost Providential that this is so. Twenty-two Witnesses speak to small-pock marks on ARTHUR ORTON, and of these seven distinctly say they have noticed the marks; ten say he was slightly marked. You see there is no exaggeration here, no attempt to deceive you—one says there were several scars visible on his face, two say that after the small-pox they saw red spots on his face, and the others do not give such definite evidence on the point. No doubt the marks on his face were of a slight nature. He was not deeply pitted, but was a man, as I suggested to you the other day, who apparently had had two attacks of the disease—one when he was very young, before he went to sea, and one after he came back from his first voyage. The attack he had when he was young did not, I think, cause the marks which were noticed on him when he became a sailor; but at any rate he was marked, and I am sure you will consider that the evidence on that point, though it does not appear very powerful, is worth consideration. It would be a difficult thing, I submit, to induce eighteen people to swear in the distinct manner that they do to the existence of these small-pox marks if there had never been any. If you believe the Witnesses this also would put an end to the ORTON Case.

Gentlemen, when I bear in mind these marvellous facts, how can I do otherwise than ask you to say that this gentleman cannot be the person whom they represent him to be? and if he be not, I say the natural inference is, that he must be ROGER TICHBORNE. For if he be not ARTHUR, why then the Family have confederated to prove him to be a person whom he is not; and who, I think, they must well know that he is not; and if this be so, what faith can we put in them, when they swear that he is not ROGER? And what would all England, what would the world think of you, if you were to rely upon a party capable of such confederacy?

The LORD CHIEF JUSTICE: We do not mind what the world thinks. We are to form our own conclusions; heedless of all external opinion.

Dr. KENEALY: Gentlemen, no doubt that is so. And yet I fancy that public opinion is not to be wholly disregarded or scorned by gentlemen like you, for the public follow the case almost as earnestly as yourselves; and do so with an interest that has hardly ever been equalled.

The LORD CHIEF JUSTICE: Dr. KENEALY we cannot permit this line of observation.

Dr. KENEALY: Gentlemen, I have been before warned by my lord upon this, and told that I must ignore the people of England. In strictness my lord is right. And yet I think it was done in the QUEEN'S Case by the eminent Counsel who appeared there against the KING. That case was not one whit more important than this. And if it was not challenged there, I wish to know why here? I hope I know my rights and privileges as a Member of the Bar, and I trust that I shall never be false to either. I feel quite satisfied that the liberties of all will exist only in name if the Independence of the Bar ceases. Trial by Jury itself would be but a mockery if the Bar were muzzled and denied free speech—by which I mean the resort to every reasonable argument which may influence the minds of jurors. Neither is it just that their line of defence should be chalked out. If a Counsel were to be told you may use this topic, but shall not urge that, what would our Courts of Justice be? Mere shams. Such a practice might be Despotism, but it would not be in accordance with the English Constitution. I owe to the Bench all deference, because it represents the Sovereign—but the Sovereign is the Father of the People, not their Tyrant; and when he becomes the latter, loyalty becomes a crime. The Sovereign of a free people can have no desire to injure any one of them—not even the meanest—and he can only wish that justice shall be meted out to all alike. And if the Sovereign herself were here, where in theory she is supposed to be, and were herself trying this Defendant on the charge for which he stands arraigned, methinks, Gentlemen, she would pause long before she rose up and said: "This argument I permit you to use; but from this other I command you to abstain."

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY continued: Gentlemen, I have pointed out to you various peculiarities which ARTHUR ORTON and the Defendant have not in common, and have supported what I have said by reference to Witnesses perfectly well acquainted with ORTON. Now it becomes my duty to point out the means which these Witnesses had of forming a valid opinion on the point. Upon the whole, I submit, the opportunities enjoyed by the various Witnesses for the Defence of seeing ARTHUR ORTON were infinitely greater than those possessed by the Witnesses for the Prosecution. There are fifty-nine Witnesses who knew him at Wapping and neighbourhood. There is one Witness who knew him at Wapping, and saw him at Santiago, in Lower California, in 1850. There are nine Witnesses who knew him in Australia. There is a Witness who had a receipt signed TICHBORNE, and who identifies the Defendant as the person who gave him that receipt in Australia; and there are seven Witnesses who knew ARTHUR ORTON and CASTRO in Australia as distinct persons. Mr. PAGE is one of those who knew him at Wapping, and there is no doubt he was well acquainted with all the ORTON family. When the Defendant first arrived in this country Mr. PAGE thought he was ORTON; but on going to see him he completely changed his opinion, and showed his faith in him by lending him £250. Amongst other things, Mr. PAGE told you about the hard, horny hands sailors always have; and here I would remark that it appears to me the appearance of the Defendant's hands is sufficient proof that he was never a sailor.

A JUROR: But ORTON only went to sea as a cabin boy.

Dr. KENEALY: He went as a sailor; but even a cabin boy has a great deal of hard work to do in the way of pulling ropes.

Several JURORS: But he ran away from the sea and turned butcher.

Dr. KENEALY: He went two or three voyages; and I believe that when once a person's hands have been covered with the horny excrescences I speak of, they never get soft again. Besides, it appears that after ORTON left the sea he did a great deal of hard work.

The FOREMAN: By his own account he did not do any particularly hard work.

Dr. KENEALY: What do you mean, Sir, "*by his own account*"? We have had no "account" of himself from ORTON. Do you imply that this gentleman is he? Then I suppose the Case ends. I pass on. Mr. PAGE was severely cross-examined, but so far from the fact of advancing his money to the Defendant prejudicing him with you, I submit that he could not have given a more convincing proof of the sincerity of his belief that the Defendant was not ARTHUR ORTON.

The FOREMAN: Did he not receive a bill for £500?

Dr. KENEALY: The Defendant gave him a bond stipulating that if the estate was recovered he should have £500.

Mr. Justice LUSH: The Witness also said that he had got back about £200 of his advance.

Dr. KENEALY: Yes, my lord; but what I am pointing out is that he was not to have the £500 unless the Defendant recovered his estates; and that the idea that he would do so must be regarded as, under present circumstances, a very visionary one. Because, before he could recommence proceedings with that view he would have to pay £45,000 as costs in the late suit, and where he is to get the money I am sure I cannot imagine. The next Witness is GEORGE SALLAWAY, the sailmaker, who, I submit, was a favourable specimen of a London artisan. He was a playmate of ARTHUR ORTON. After this Trial had been going on for some time the Defendant thought of going to Wapping for the purpose of holding a meeting and exhibiting himself to the inhabitants of that neighbourhood. SALLAWAY went to one of those meetings, for the perfectly legitimate purpose of seeing if he could recognise his old acquaintance. He saw the Defendant, and he pledges his oath that he is not ORTON. This Witness also says he used to bathe with ARTHUR ORTON, and that ORTON had no brown mark—another proof that this gentleman cannot be ARTHUR ORTON—he never saw on his back any brown mark such as you heard Sir WM. FERGUSSON say the Defendant has, and no such malformation as Dr. WILSON proves that he has.

A JUROR: Mrs. COTTON says he had the brown mark.

Dr. KENEALY: I beg your pardon, she does nothing of the kind.

The JUROR: Well, a red mark.

Dr. KENEALY: That is a totally different thing. The next Witness is JOHN FINNIS, who is a bargeowner and lighterman, and he seems to be a very respectable man. He remembers ARTHUR ORTON from the time they were boys together up to the time when the latter came back from sea. He mentions the physical peculiarities of ARTHUR ORTON to which I have already directed your attention. He is the man who was very nearly drowned on the occasion in 1852 when the boat upset. I will not again call your attention to the case of ARTHUR ORTON saving this man's life and his own in consequence of the large hand which he had enabling him to grasp the sponson; but I will call your attention to the various and long opportunities which this Witness had of knowing ARTHUR. From an early period of his life he was an intimate acquaintance of ORTON'S; he had gone about with him in various places; and, looking at the Defendant, he

has made up his mind beyond the possibility of doubt, that he is not ARTHUR ORTON, but is somebody else. A great deal was sought to be made by my learned friend Mr. Serjeant PARRY, out of this Witness upon the question of voice. I think there is very little in this question of voice. I pointed out to you the various reasons which might operate to produce a change in the Defendant's voice and therefore I do not care much about the voice; but I think I shall be able to show you when I come to investigate the matter, that ROGER TICHBORNE'S voice was by no means so remarkably different from the voice of the Defendant as the Prosecution would lead you to suppose. I shall be able to point to the evidence of two or three people at least who have told you that ROGER TICHBORNE'S voice was a sort of mumbling, indistinct voice, and by no means such a voice as one would naturally expect from him, but that particular kind of voice which the Defendant is now supposed to have, and which for a long time it has been the object of the Prosecution to show ARTHUR ORTON had. However, you will hear what Mr. FINNIS, who had as good opportunities as any person in the world could have of ascertaining, says upon the subject of voice. Being pressed by Mr. Serjeant PARRY in cross-examination, this Witness says he cannot trace any resemblance between the Defendant's voice and the voice of his old friend ARTHUR ORTON, who, he says, had rather a gruff voice. That was the first attempt made to establish a species of identity or resemblance in voice between ARTHUR ORTON and the Defendant, and that attempt, as you see, absolutely and entirely failed. I do not know why it has been assumed that the Defendant has a gruff, coarse voice. I trust that some one among you, Gentlemen, may have heard the Defendant address a public meeting, and, if so, he will be able to form his own opinion as to whether the Defendant's voice is a gruff, or a vulgar, or a coarse voice, or whether it is not the voice of a gentleman, bearing in mind the vicissitudes through which he has passed, and bearing in mind also the physical reasons why that voice should be considerably altered from what it was. I think when I have called your attention to the description given of the voice of ROGER TICHBORNE you will be satisfied that that mumbling, indistinct sort of voice which he sometimes used, and which rendered him sometimes almost unintelligible to the ladies with whom he came into personal communication, has subsided now into that sort of voice which the Defendant has, and which has been assumed to be the gruff husky sort of voice which ARTHUR ORTON had. The Witness FINNIS distinctly and positively swears that the Defendant is not ARTHUR ORTON; and although cross-examined by my learned friend Mr. Serjeant PARRY, who is one of the ablest cross-examiners at the English Bar, he was unable to shake him in the least degree, or to do anything to raise a doubt in your mind as to the perfect faith, honour, and truthfulness of the Witness. The next Witness was PETER GODHART, a plumber and painter, who had carried on business for thirty-three years at Wapping, and who was well acquainted for a great many years with old ORTON and the members of his family. He describes ARTHUR ORTON; and having, in order to satisfy his mind, had some conversation with the Defendant, he left with the complete and full conviction that he was not ARTHUR ORTON. Mr. JOHN WYNER, who was next called, is a retired shipping fishmonger who carried on business for upwards of thirty years at Wapping. He also knew old GEORGE ORTON well and the whole of the family. He is not likely to have forgotten who ARTHUR ORTON was, for ARTHUR was, he says, in the habit of bringing up orders from his father to him and of taking fish to carry it on board the ships. This Witness is asked whether he sees any likeness between ARTHUR ORTON and the Defendant, and he says unhesitatingly, "Not the slightest." Now, Gentlemen, I ask you to consider the enormous number of Witnesses of really respectable position and character who have seen the Defendant, and who all testify that he is not ARTHUR ORTON. If anybody in the world can remember and know well who ARTHUR ORTON was and what he was those persons must be amongst that number. Can you believe it to be possible that those persons either are telling you falsehoods, or the Defendant has that wonderful mesmeric power that after a conversation of an hour or two with them he is able so to disguise himself as to drown all reminiscences in their minds of what ARTHUR ORTON was? Is that a power given to man? Is there any man you ever heard or read of who was capable of persuading a number of persons after two hours that he was not the man they knew twenty years ago, whom they played and conversed with, but that he was an entirely different person? Is there any man in the world who has that power? I submit that all the experience of mankind and of the world ought to bring you to the conclusion that no such power is given to man. Men will always recognise each other by their recollections of the past, and it is utterly impossible for anyone living to persuade you that you had not known him fifteen or twenty years ago, if such were the fact. If there were a man who had that power, he would exercise it with magical influence over all his fellow-creatures. Such a power Providence has not thought fit—very wisely, no doubt—to assign to any human being. Yet you are seriously asked to believe the Defendant has that species of power that almost immediately he has seen any person who has known ARTHUR ORTON for years and years, and has the most complete and perfect recollection of what he was, he is able to convince him against his senses that he is not ARTHUR ORTON, but an entirely different being. I come now to WILLIAM WESTON, the boot and shoe maker, who knew ARTHUR ORTON very well. He remembers him particularly during the two years of 1851 and 1852, and he speaks about his feet, and also the cut upon the cheek. He first sees the Defendant at CREIGHTON'S house, and he was quite satisfied he was not ARTHUR ORTON. He tells us that ARTHUR ORTON was a gruff-speaking man, and that he does not find any of that gruffness in the voice of the Defendant. An attempt was made, Gentlemen, to show that EDMUND ORTON had an accident with a pony, and also that he was the person who was in the habit of wearing earrings. But I am entitled to say that the attempt has entirely failed, because Mr. HAWKINS called rebutting evidence, and he might, had he thought fit, have proved that EDMUND was the person who had an accident with the pony, which resulted in a scar upon the face, and that he was the member of the family who wore earrings. But Mr. HAWKINS attempted neither, and I ask you to regard the absence of any such attempt in the Defendant's favour. The next Witness was JOHN YEATS, who describes ARTHUR ORTON'S features—features which do not exist in the present Defendant—and says that there is not the least resemblance between the two men. He is a man who has a perfect recollection of ARTHUR and all the family.

The FOREMAN: Did he not say that GEORGE ORTON was only about two years older than ARTHUR?

Dr. KENEALY: He may have done so.

The FOREMAN: And he was 12 years older.

Dr. KENEALY: I find he said two years older in answer to a suggestion made by Mr. HAWKINS, and I complain that wrong dates should have been suggested to the Witnesses as they have been. I must respectfully ask you to lay no stress upon dates. If you do so, you can never do this man (the Defendant) any justice. I say dates are a mere will-o'-the-wisp. I venture to say not one man in the Witness-box remembers dates unless he has written them down in memoranda or books, for the purpose of refreshing his memory.

Mr. TAYLOR (Juror): Dates are a crucial point in this Case.

Dr. KENEALY: With all respect to you, and every one of you, I don't think so. In regard to this particular Witness, I say it would be hard not to believe him simply because he thought ARTHUR older than GEORGE.

The FOREMAN: He may have confounded one with the other.

Dr. KENEALY: It has never been suggested that GEORGE had earrings or a cut on his face. That suggestion is made in regard to EDMUND. JOSEPH WILLIAMS is the next Witness. He had many opportunities of seeing ORTON, and has a full and accurate recollection of him. He says the Defendant is not his old acquaintance, and because he cannot give certain dates his evidence is not to be rejected.

Mr. Justice MELLOR: It depends very much on the nature of the facts, and very much on the nature of the individual's memory.

Dr. KENEALY: No doubt.

Mr. Justice MELLOR: It is not a matter in regard to which you can lay down a hard and fast rule. Everybody must apply a common-sense rule for himself.

Dr. KENEALY: I am obliged to your lordship, for it is such a hard and fast rule I was afraid the Jury were going to draw, and I think it would cause great injustice.

The FOREMAN: This Witness made the same mistake as the last in regard to the age.

Dr. KENEALY: Yes, but we are all liable to mistakes of that kind, while we do not forget facts. As a rule, a man does not know the dates when his children were born, and, if you ask him, will either refer you to his wife, or he looks in his diary or Bible, where such events are recorded; but as to the fact that they are his children, and that they were born in his house, he has no doubt whatever.

The FOREMAN: He would not say that one was older than another when it was not so.

Dr. KENEALY: Not in regard to his own children, but this man was a mere acquaintance of the ORTON FAMILY. The Witness goes on—"I do not know the date; I dare say the Solicitors can tell. I asked him to draw back the blind to have all the light I could. They asked me to have a chair, and I said I would rather stand up. He stood up and turned round. I told him that would do, and I said, You may be TICHBORNE or any other horne, but, I said, you are not the ARTHUR ORTON I knew." There is a man who seems to have gone conscientiously to work to test the Defendant. He says, "I am not going to be made a party to such a fraud as you are charged with. Half England says you are an impostor, and the other half says you are not, and I have come here to test whether you are ARTHUR ORTON or not." And this man comes and swears that the Defendant is not the man. Evidence of that kind, it seems to me, is entitled to the greatest possible weight. You may make a mistake in ages, but not in the man. There are a great many men who have no doubt they are married, who, if asked what was the date of their marriage, could not tell. A great many people have a number of children. As a rule, unless a man is constantly consulting his Bible or his register, he does not remember the date of his children's birth. I will undertake to say that if you were to ask half a dozen of your friends to tell you the various dates of their children's birth, they would as a rule refer you to their wives, and say, "Oh, really, I cannot tell you; ask Mrs. So-and-So." (Laughter.)

A JUROR: You would not call them boys together if one was 11 and the other 26. (A laugh.)

Dr. KENEALY: The suggestion came from Mr. HAWKINS, "Was he one or two years older?" I say such a suggestion was not exactly right or fair. What Mr. HAWKINS ought to have done in fairness to the Witness was to have allowed him to exercise his own independent judgment upon it, and to have said, "Well, as you knew these two brothers so well, what was the difference in their ages?" The man would not then have been thrown off his guard.

Mr. HAWKINS: My friend Mr. Serjeant PARRY was the great criminal in that instance. (Laughter.)

Dr. KENEALY: I am sorry for that, because Mr. Serjeant PARRY is usually so very discreet.

Mr. Justice MELLOR: He bears it very discreetly now. (Renewed laughter.)

Dr. KENEALY: I must ask you, Gentlemen, to deal with it as you think fit. I have told you what my views are, and if those views have no effect upon you, of course I cannot help that. Mr. JOSEPH BILLING is the next Witness. He is an examiner in the Customs, and therefore, I presume, a person of some accuracy. He remembers the ORTON family from 1841 to 1847, and he is able to describe ARTHUR perfectly well. He takes this mode of finding out whether the Claimant is really ARTHUR ORTON or not. He went to the Pavilion Theatre for that express purpose, and took with him a strong opera glass. He did not, however, get a good position, and he came away rather dissatisfied. He was struck with a resemblance he saw in various photographs of the Defendant to old GEORGE ORTON; and he went to the Pavilion again, had a good view of the Defendant, and came away with the conclusion that he could not be ARTHUR ORTON. He described ARTHUR as a large, lazy, hulking fellow, quite different from the Defendant. He was asked whether there was anything in the tone of his voice which recalled to him the voice of ARTHUR ORTON, and he replied, "Not the slightest." If you contrast the clear, unhesitating evidence of this Witness with that given by the Prosecution on this branch of the inquiry, conviction must be carried to your minds that BILLING is a Witness that can be and ought to be relied on, while the great majority of the Witnesses for the Prosecution were conspicuous for the paucity of their knowledge of what ARTHUR ORTON was. JOHN YEATS was then recalled, and produced the boot-last. You will form your own conclusion upon that. HENRY STEERE was the next Witness——

The FOREMAN: Is he a credible Witness?

Dr. KENEALY: Oh, yes, I hope so. He says that he took a great deal of trouble to go and see the Defendant, and that as far as outward appearance goes he is nothing like his old friend ARTHUR ORTON. The only thing alleged against Mr. STEERE is this. He had the misfortune to be travelling on a certain railway company's line, or to be crossing one of their bridges or platforms; there was a hole in it; he put his foot through the hole, and he did himself serious damage. He brought an action against the company, who had it tried by a special jury, and Mr. STEERE lost his action. Now, Gentlemen, if everybody who fails in an action against a railway company is henceforward not to be considered a credible Witness, I hardly know where we shall be; and yet that is the only thing alleged against Mr. STEERE.

The FOREMAN: Did he not swear his foot had slipped through a hole not large enough to admit his hand?

Dr. KENEALY: That is what was stated, but I doubt whether any man would be insane enough to do so. I don't believe one word of what the railway porters say about the size of the hole. Besides, however, I dissent entirely from the view that, because a man fails in a railway action, or in any other kind of action, he is to be considered as an incredible Witness for the rest of his life.

The FOREMAN: Did not the Jury visit the hole?

Dr. KENEALY: They visited a hole. (A laugh.) What I say is that I cannot imagine a man who was not newly out of a lunatic asylum doing anything so insane as is suggested.

The FOREMAN: Then you don't believe in the doctrine of trying it on?

Mr. Justice LUSH: You don't think persons ever bring absurd actions? (Laughter.)

Dr. KENEALY: I can hardly imagine anyone bringing so absurd one as this.

Mr. Justice LUSH: I have tried some myself quite as absurd. I don't think it more absurd than LUIE getting his photograph taken.

Dr. KENEALY: Well, Gentlemen, you may not believe Mr. STEERE. I myself have seen nothing in the testimony or the antecedents of Mr. STEERE that would entitle me to say that he is not to be believed upon his oath. Then we have GEORGE CASE, a stevedore, who knew ARTHUR ORTON very well for a very long time, and he says the Defendant is not ARTHUR ORTON. The Witness is cross-examined and asked if he knew ARTHUR ORTON'S brother—but I must protest against such a line of cross-examination, which is not directed to the main issue, and has no more to do with the subject than the cant phrases which were in vogue some years ago, "Do you see any green in my eye?" or "Does your mother know you are out?" (Laughter.) Mr. WAKELING proved the pony bite from which ARTHUR ORTON suffered, and that the scar would be a permanent one. He also said that the Defendant was not ARTHUR ORTON. A great deal was made of the burning of the books; but I don't know why that Witness should be thought an incredible liar because in a fit of passion he burns some books. However, that seems to be the idea. Then there is WILLIAM WEBB, who gets his living as an interpreter, and he remembered ARTHUR ORTON distinctly, and he, upon looking at the Defendant, said, "He is not ARTHUR ORTON, nor does he resemble him in any respect." CHRISTOPHER DIX, a pilot, who had belonged to Wapping ever since he was twelve years old, had been brought constantly into contact with ORTON, and, knowing him well, said the Defendant was not he. Then we have JOHN HAYWARD, a bootmaker, who lived at Wapping during the whole of his life. He knew ORTON from the time he was a boy, and he said the Defendant was not at all like him; he could not see the slightest resemblance. I am unable to detect a single thing in the whole of the cross examination of this Witness which should induce any person to doubt his testimony. JOHN BUSH, a waterman, who lived at Wapping all his life till 1853, said he knew the ORTONS, and ARTHUR perfectly well. He saluted ARTHUR with "What cheer, BULLOCKY?" He speaks to ARTHUR'S height, high cheek-bones, and other peculiarities. The next Witness examined was ABRAHAM BUSH, the brother of the last Witness, and I suppose you all heard or read in the papers that the unfortunate man had been killed soon after he gave his evidence here. He remembers everything particularly well about ARTHUR ORTON, and he says the Defendant is not he. JAMES COCKSHOTT, a licensed waterman, who has known ARTHUR ORTON ever since he was four years old, remembers the scar, the cheek bones, the largeness of the hands, and that ARTHUR wore earrings. ELIZA KEMMINOE also knew all the ORTON family. She was in the habit of playing with them as children, and she remembered ARTHUR down to August, 1852, when he was a great big stout man. She says the Defendant is not like ARTHUR ORTON. Then we have WILLIAM JARVIS, the son of JOHN JARVIS, mentioned in the Wagga-Wagga will, who remembers distinctly ARTHUR coming with his mother to Bridport in 1845, and staying with them for six weeks. They slept in the same bed every night, and he states positively that if ARTHUR ORTON had a brown mark on his side he must have seen it during those six weeks. Probably no stronger evidence could be given that the Defendant is not ARTHUR ORTON. He says the Defendant is not the ARTHUR ORTON he knew; that his features are altogether different. That JARVIS is an honest Witness must, I think, be evident from the fact of his denying that he had ever seen smallpox marks on ARTHUR ORTON'S face. This Witness was attempted to be browbeaten in cross-examination about the brown mark on the side, being asked a number of questions by Mr. HAWKINS respecting his seeing ARTHUR ORTON undressed, as if, indeed, either of these persons was a young modest virgin. All this was mock modesty put before the Jury, and, as I submit, only to mislead.

Gentlemen, it occurred to me the other day that a good deal of what takes place here is just like what happens when you enter TINTERN ABBEY on an autumnal afternoon. You are at first so struck by the dim, monastic gloom, the ivy curtains, the shade of trees, the soft and almost vesper twilight which wraps those ruins in a holy cloud, that you can see nothing clearly or with precision. You feel surrounded by phantoms of the past. Your sight is lost in wondrous thought. By-and-bye you are restored to yourself. You grow accustomed to the shadowy light. You see, one by one, all the fair features emerge; and you are filled with a sense of clear observation. So it is here. Much of what we beheld at the opening of this Case was immersed in mists. These, I think, have now gradually melted away. Our eyes have grown accustomed to what at first pained, or made them dull. Upon the dark, light has fallen. Upon "the palpable obscure" a gleam like that of the sun has shone. And who does not rejoice in the newly recovered sense of being able to contemplate what seemed before impossible to scan?

[It being now within a few minutes to four o'clock, the Court adjourned.]

ONE HUNDRED AND FORTY-EIGHTH DAY.——WEDNESDAY, DECEMBER 31ST, 1873.

Mr. Justice MELLOR said: I am sorry to say that the Lord Chief Justice is not able to attend this morning.

Dr. KENEALY resumed his address to the Jury. He said: May it please your lordship, Gentlemen of the Jury—The next Witness to whom I shall direct your attention is THOMAS GRADY—a man of great intelligence, who speaks to all the peculiar characteristics of ARTHUR ORTON. He is of course asked the usual questions as to dates, and it would seem that his evidence is to be impeached because he did not know the exact time he first laid eye on ORTON. He described him as a big-boned, raw-boned man, with large muscular limbs. There could not be conceived a person who is more the opposite of the Defendant than

ARTHUR ORTON was. This Witness belonged to the highest class of artisans, than whom when they are temperate and industrious, there are no more respectable people in the country, and I am sure you will place reliance on what he said. The next Witness was ELIZABETH LANCASTER. She lived about twenty doors from the ORTONS, and knew them well. I rely on her evidence, as contradistinguished from the Witnesses for the Prosecution, the majority of whom knew little or nothing of ARTHUR ORTON. She, too, speaks of the big bones and large head of ORTON, and the various characteristics which distinguished him from most other people, and especially from the Defendant. ROBERT CHAMBERLAYNE was the next Witness. You will remember him and the eminently respectable appearance which he presented. He said he used to see ARTHUR going with his father to the meat market, and he spoke of him as a rawboned lad, with large mouth and projecting lips, and he said the Defendant bore no resemblance to him.

A JUROR: He never saw him after 1848.

Dr. KENEALY: Yes; but if his hands were large in 1848, they would be still larger at the present time. ARTHUR ORTON was early developed, and the Witness said he had large hands and feet, which is sufficient for my purpose. He was asked by the Lord Chief Justice if it required some time to learn to cut up meat with a butcher's usual skill, and he said it would take four or five years to learn to do that well. The tendency of that question and answer was to impress on your minds that ARTHUR ORTON must be the same person as the Defendant, who learned butchering in some extraordinary way, and kept a butcher's shop at Wagga-Wagga; but that was dispelled by the evidence given subsequently, namely, that in those days, in Australia, people were in the habit of buying meat in large quantities, and therefore the same skill was not required to conduct a butcher's shop there as is required here; and although one of the Witnesses said the shop was kept neatly and so on, that implies that the person who kept it being a born gentleman would be neat in his habits, rather than that he was a skilled butcher.

Mr. TAYLOR (Juror): There is evidence that the meat in HIGGINS'S shop was cut into joints.

Dr. KENEALY: The Witness FOX deposed that it was roughly cut in lumps, or quarters. The next Witness was Mrs. SCOTT, who knew all the ORTONS, and she swore that the Defendant had nothing whatever of the ORTON about him. Then we had JOSEPH MANNING, a ship rigger, in very respectable employment. He was a schoolfellow of ARTHUR ORTON, and deposed that he had high cheek bones and large flat feet—things which could never alter; and also that he had a remarkably large head. This Witness had bathed with ARTHUR, and distinctly remembered a cut upon his hand, and the fact that he had no brown mark on his side. He deposed to no such malformation as this Defendant has. On cross-examination he swore that the scar of which he spoke was two inches in length. That fact he mentioned for the first time in the box. You cannot fail to have observed, Gentlemen, that accident has been one of my greatest assistants in this Case. Matters have come out, sometimes useful to us, sometimes not useful, but coming out in the most unexpected manner. The next Witness was JOHN SEARL, who spoke of ARTHUR ORTON as a muscular, big lad. The Lord Chief Justice suggested that, as the Witness did not know ORTON after 1848, he should not be cross-examined, but, with great deference, I cannot help thinking that the bulk and appearance of ARTHUR

TINTERN ABBEY.

ORTON even at that date are of importance. I have, however, a cloud of Witnesses who knew him after 1818. JOHN JAMES LEVER was the next Witness. He knew ORTON well, and described him minutely, as the other Witnesses had done, adding that in 1817, when he was only fourteen, he had the appearance of a boy of seventeen—a fact which I think cannot but help you, Gentlemen, in coming to a right conclusion. The next Witness was GEORGE WEEDON. This Witness, like others looking at this portrait of old GEORGE ORTON (produced), said that both he and ARTHUR kept their lips apart, showing the teeth. The Witness also spoke of ORTON'S big bones. He bathed with ARTHUR frequently, and saw no brown mark. He saw no malformation. In truth ORTON had none. The Defendant, he said, was not the least like ORTON, adding that ORTON had a bigger head when a boy than the Defendant has now. WILLIAM MYERS, the next Witness called, speaks of ORTON'S big head, high cheek bones, splay foot, and large hands, and he distinctly says that the Defendant is not ARTHUR ORTON. JOSHUA WESTMORELAND, the next Witness, knew ARTHUR ORTON down to the year 1851, and he spoke of his wearing wire earrings, and as to his having high cheek bones and being marked with the small-pox. He was under cross-examination for a long time, but his testimony remained unshaken. In reply to Mr. Justice MELLOR, the Witness swore in the most positive manner that he saw ARTHUR ORTON wearing ear-rings, and heard him complain that his ears were very sore. He also stated, in reply to a Juror, that he saw ARTHUR ORTON turning the rings round in his ears. Is that true, or is it a wicked invention? I ask you to say it is true. Mrs. CASTON was the next Witness, and she knew ORTON down to 1851. She was examined as to the year she got married in, and she said it was in the year 1851, whereas it turned out to be 1849—a remarkable illustration of the difficulty of speaking accurately of matters which happened so many years ago. This Witness honestly stated that she at first fancied in the Defendant a slight resemblance to ARTHUR ORTON. She explained that afterwards by stating that, when she first saw him, he had a cross look. We know that ARTHUR ORTON was a scowling, ferocious, savage-looking ruffian. When, however, the Witness saw more of the Defendant, she became convinced that he was not and could not be ORTON. The next Witness, PELL, came to see the Defendant in the expectation of seeing his old friend ARTHUR ORTON, but he was thoroughly convinced that the Defendant was not ORTON, and a sense of justice and fair play compelled him to come forward and state that he was not ORTON. It was with this Witness that the system of, I will not say mystification, but the system calculated to confuse the Witnesses by showing them photographs, commenced. I ask you to look at these two enlarged photographs which were shown to the Witnesses—(produced, and handed to the Jury). The one was taken in Sydney. I do not know where the other came from. Is there any likeness whatever to the Defendant in the second, and yet it is so put forward? It is as much like me as it is like the Defendant. In fact, it is more like the King of ASHANTEE, or a person who has just descended a chimney. (Laughter.) I mention this to show you that you must not be misled by photographs; more par-

ticularly by the Chilian daguerreotypes so much relied on by the Prosecution. If those photographs—enlargements of photographs of the Defendant—are not reliable, I ask you not to lay stress on the daguerreotypes. Nothing could be more deceptive or more likely to mislead.

Mr. Taylor (Juror): One of your Witnesses saw a resemblance in the enlargement of the Australian photographs.

Dr. Kenealy: Very likely, but I am asking you to look at them and judge for yourselves. Gentlemen, the next Witness was Richard Henry Moore, who spoke of the scar on Orton's left cheek which he himself dressed, and as to his being a big, burly man; and, in reference to the Defendant, he said, "This is a more refined man in appearance than Arthur Orton was." He was threatened and cautioned in cross-examination in the usual way, but he was not shaken in the least degree, nor could he be got to express a doubt that the Defendant is not Arthur Orton. In reply to one of your body, he stated distinctly that the wound he dressed would leave an indelible scar on Orton's cheek. Joshua Bentley, a lighterman, was next called, and he swore that the Defendant was the very reverse of what Arthur Orton was. George Russell, who served the Ortons with fish, and knew Arthur well, also deposed that the Defendant was not an Orton. He was shown one of the set of photographs in the Case which he said was like Orton. I do not know whether you are acquainted with the photographic art, but if so you will know that a very few touches make a picture like or unlike. Hence there are touches—given by whom I know not—which gives the Defendant a scowl which we have not seen on him during all these months.

The Foreman: You can always know whether a photograph has or has not been touched.

Dr. Kenealy: The Defendant has nothing of the savage look which is there exhibited. It may be that it is a bad copy of a bad photograph; but to me it looks like the photograph of a man who had had an awful kicking, and sits down sullen and scowling because he cannot kick the person who kicked him.

The Foreman: This has not been touched.

Dr. Kenealy: Then it is a bad copy. It was put into the hands of the Witness, and the Counsel for the Prosecution appeared to be very much astonished that it was not at once and fully recognised. It is undoubtedly a photograph of the Defendant, but a bad one. Whether the Australian one is a likeness of the Defendant you will judge for yourselves. I cannot think it is. The Defendant sent it to Lady Tichborne as his photograph, and says it is like, and he is bound by what he says. I can see in it no resemblance to the Defendant. The next Witness, Edward Tully, deposes that the Defendant was altogether different from what Orton was; and George Champion, a shipmaster, gave similar testimony, both being positive—and giving reasons for their conviction—that the Defendant is not an Orton.

Mr. Taylor (Juror): The Witness Champion recognised the miniature likenesses of Mr. and Mrs. Orton.

Dr. Kenealy: I do not say that they are not likenesses, but you will examine them, and say whether the eyebrows of old Orton have not been touched.

Mr. Turner (Juror): Champion said that the hair of Arthur Orton was light brown.

Mr. Justice Mellor: He did.

Dr. Kenealy: The general accuracy of these Gentlemen is remarkable, and does great honour to our Jury system. Gentlemen, the Witness was positive that the Defendant was not Arthur Orton, and referred to Orton's splay feet, big bones, gruff voice, rough appearance, and so on. The Witness was asked as others were, about a collar said to have been picked up in Australia. If the Crown had any information on that subject they ought to have given it, but we are left in utter ignorance as to what was meant. All that was done was to throw out insinuations as to Mr. Onslow and Mr. Whalley, public men of honour and position. I asked the Witness whether he had been bribed by either of these gentlemen, for I am wholly at a loss to know what was meant to be implied by the constant imputations hinted at. I could come to no other conclusion than that it was meant to be insinuated that they adopted unfair means for furthering the Defendant's cause. Mr. Hawkins will find it difficult to justify his insinuations if my premiss be the correct one. A very important thing came out on the cross-examination of the Witness—namely, that long before he had communicated with anyone connected with the Defendant, he had informed his employer Mr. Wardley, that Arthur Orton had a scar on his cheek. The next Witness was James Begg, and he spoke of Orton's big feet, and what he called his "shinnified walk," whatever that may mean.

Mr. Turner (Juror): And as to Orton wearing earrings.

Dr. Kenealy: I am much obliged to you, Sir; that fact had escaped me.

Mr. Justice Mellor: He also said that Arthur Orton's hair was of a light sandy colour.

Dr. Kenealy: He did. I do not know whether this would be the proper time to make an appeal to your lordships. Two or three days ago the Foreman of the Jury, who is entitled to the respect of us all, made a statement to the effect that three or four people whom he knew had had their ears pierced, and that no trace of the piercing remains. Now it is a crucial part of my Case that Arthur Orton's ears were pierced, and that the Defendant's never were. Upwards of twenty Witnesses have sworn positively that Orton wore earrings. Now, the medical testimony shows that where the skin has once been pierced an ineradicable scar is left, which can be discovered by the eye or the touch. What I lament is this—that when the medical men were under examination, the Foreman did not mention the cases, so that the eminent men who were examined might be questioned on the subject. It may be true that to ordinary people the marks of piercing may not be perceptible, and yet to practised surgeons they would be apparent. What I fear is that the statement of the Foreman cannot fail to have influence upon the minds of the other Jurors. I am in this difficulty, that at this stage of the Case I am deprived of the opportunity of testing the matter by surgical evidence.

Mr. Justice Mellor: I thought it was rather that the Foreman challenged you to say whether his ears had ever been pierced.

Dr. Kenealy: That is quite correct, but I allude to a subsequent observation.

Mr. Justice Mellor: It is a matter as to which there may well be a difference of opinion. We have had evidence as to scars on the temporal artery and other places that were detected by one gentleman and could not be detected by others. The same observation may apply to the ears. A scar which is not perceptible to one person may by the use of a particular mode of discovery be found by another. I quite agree as to the importance of the matter of fact, but your doctors say that scars would remain and could be discovered by a particular process.

Dr. Kenealy: Yes, my lord.

Mr. Justice Mellor: I am perfectly sure the Foreman is quite open to conviction on the subject.

Dr. Kenealy: I do not doubt it for a moment. Mr. Haden and Mr. Holt also said that when the true skin is pierced it is destroyed, and an indelible scar would remain.

Mr. Justice Mellor: They did: and it may be that in the case of a pierced ear it would be more difficult to a non-professional person to detect the scar. It would, of course, be more difficult still if earrings had not been used, or had only been used for a short time. You must not take the statement of the Foreman as a matter of evidence, but as a mere observation. He and his brother Jurors will be guided by their experience, but will apply it to the evidence which has been given on the subject of scars.

Dr. Kenealy: The observation of the Foreman must have had weight.

Mr. Justice Mellor: I am sure we must all have observed and been impressed by the extraordinary attention all the Jury paid to the evidence, and by their recollection of it.

Dr. Kenealy: I fully concur with your lordship.

The Foreman: I was not aware that the observation I made would have had an undue effect, or I should not have made it.

Mr. Justice Mellor: I am quite satisfied, Gentlemen, that you will one and all be guided by the evidence. I have no personal experience of it, but I have heard it said that earrings may be fastened to the ears without any piercing at all. I have been told that by ladies. The Jury are not bound implicitly to follow evidence in forming their judgment, but they should be very cautious in setting their own experience against that stated by sworn Witnesses.

Dr. Kenealy: I am glad to hear your lordship say that.

The Foreman: My ears were never pierced for rings, and I never wore rings.

Dr. Kenealy: I naturally felt alarmed, because it is one of the crucial tests in the Case.

Mr. Justice Lush: Every Juror will apply his own experience to the evidence. They will, of course, be very cautious in placing their own observation against the sworn testimony of skilled and professional Witnesses.

Dr. Kenealy: The Foreman will not think for a moment that I meant anything disrespectful to him.

Mr. Justice Mellor: Oh! certainly not.

The Foreman: I may say that the best evidence to myself that my ears were pierced is that I pierced them myself. I did not wear earrings.

Dr. Kenealy: You will remember that scars which eminent surgeons could not find were discovered by Dr. Wilson by applying a ligature.

Mr. Justice Mellor: It is a matter of controversy, and we all know doctors differ. The Jury will weigh the evidence at either side. There is a conflict of testimony as between Mr. Haden and Mr. Holt on one side, and Sir William Fergusson and Dr. Wilson on the other.

Dr. Kenealy: I may remark that difference of physiological temperament may lead to different results. There are some persons whose blood is so pure and healthy that a severe wound would heal up in a few days; there are others whose blood is so corrupt or diseased that such a wound would not heal up for months. The great majority of men belong to the latter class, and the traces of ear-piercing would remain in these for a number of years.

The Foreman: If the pierced ears became sore, the scar would be likely to remain.

Mr. Justice Mellor: No doubt.

Dr. Kenealy: And there the observation as to physical condition would apply.

Mr. TAYLOR (Juror): I can give you an instance. My finger was laid open by a cricket ball, and now no scar is visible. I received another wound, and the scar remains.

Dr. KENEALY: Within what time?

Mr. TAYLOR: Both within ten years.

Dr. KENEALY: Physical condition may account for the fact. It is hard to say anything positive on the subject.

Mr. Justice MELLOR: The wearing of earrings would make it more likely that the scar would remain.

Dr. KENEALY: No doubt, my lord, and here they were worn. The next Witness, Gentlemen, was THOMAS JOHNSTON. He knew ARTHUR ORTON well, and lived in the house three months, and had frequent opportunities of seeing him. He deposes that the Defendant is in no way like him.

Mr. HAWKINS: He lived in old ORTON'S house three months, but only saw ARTHUR during fourteen days.

Dr. KENEALY: I did not say he saw ARTHUR during three months. I said he had frequent opportunities of seeing him. Gentlemen, they are so sharp on me I shall be afraid to say anything soon. Another Witness, JAMES BRUNSDEN, says, that in 1851 he saw ARTHUR ORTON, and that the scar was then on his cheek. He also spoke distinctly as to his voice, and said that there was nothing whatever in the voice of the Defendant that reminded him of ARTHUR ORTON. Now, Gentlemen, I must call your special attention to the question of the feet. Mr. HAWKINS assumed that ARTHUR ORTON used to wear butcher's boots—thick, solid, heavy butcher's boots, such as butchers generally wear.

The FOREMAN: A shoemaker said that he used to measure him for Blucher boots.

Dr. KENEALY: Blucher boots are not the same thing.

A JUROR: Did not CHAMBERLAYNE say he did?

Dr. KENEALY: I do not remember it.

Mr. Justice LUSH: What he said was that butchers use large coarse boots and thick stockings.

Dr. KENEALY: But does he say that ARTHUR ORTON wore such boots?

Mr. Justice LUSH: No; but he says that ARTHUR ORTON was a butcher.

Dr. KENEALY: No Witness, Gentlemen, ever said that ARTHUR ORTON wore big, heavy butcher's boots. I am, therefore, right in saying that there is no evidence that ORTON ever wore such boots. This is not a Case in which you can come to a conclusion on any point that is not founded upon evidence, and I am sure you will not do so.

Mr. TAYLOR (Juror): Is it not a common-sense view that he would slaughter in butcher's boots?

Dr. KENEALY: There is no proof that he ever slaughtered in England. He did in Australia; and it is part of my Case that, in slaughtering for Mr. M'ALISTER, no blue tattoo mark was noticed on his arm.

Mr. TAYLOR (Juror): Unless he could slaughter beasts, he would not have been appointed as butcher on board the 'Middleton.'

Dr. KENEALY: This is all inference; and I beg you will not come to any conclusion without proof in evidence.

Mr. Justice MELLOR: Yes; so far as the main issue is concerned; but in regard to the details we must draw the inferences such as are usual in everyday life. For instance, if a man is apprenticed to a butcher, it is natural to suppose that he would kill beasts.

The FOREMAN: He could not have been appointed butcher on board the 'Middleton' without having some knowledge of the trade.

Mr. Justice MELLOR: Though there has been no proof that he was ever seen in a slaughterhouse, it seems reasonable to conclude that he did what was usual in the business. You would hardly require evidence that he slaughtered an ox.

Dr. KENEALY: I would remind your lordship that he was never apprenticed to his father as a butcher, and that he went to sea when he was little over fourteen.

The FOREMAN: Your own Witness speaks of his wearing the same sort of boots that a butcher wears.

Dr. KENEALY: He means boots such as persons in that class of life ordinarily wear. There is no one speaks of his wearing those long boots Serjeant PARRY mentioned. At an early stage of the Trial, and before half our Witnesses had been examined, the attention of the Prosecution was directed to it, and they did not ask one single Witness a question on the subject. I think you will agree with me that it is a legitimate inference to draw, that if they had had anything like evidence that ARTHUR ORTON wore such boots they would have asked the Witnesses one after another whether he did wear them. One defect in the link may render the whole valueless. ARTHUR used to go on board ships, and probably he would assist in his father's shop; but there is no proof that he ever slaughtered a beast, or that he was ever apprenticed to his father. It is not reasonable to suppose that his father would have allowed him, a boy of fourteen, to slaughter beasts when he had other sons much older with him. I think all the persons called on the part of the Prosecution would have been able to speak as to his wearing these long boots, if he had worn them. If the bootmaker had made them for him he would have said so, but he merely says: "I made butcher's boots." Before half of our Witnesses were examined that matter was put forward, yet the Prosecution never asked them anything material upon it. Therefore I have a right to come to the conclusion that he never did wear such boots. The Witness went on to say that ARTHUR used to wear Blucher boots whilst helping him in the stables. This man also describes ORTON'S neck as a medium one. Mrs. MARY SMART is the next Witness. She had a shop in the High-street, Wapping, and was in the habit of serving the ORTONS. ARTHUR used to come to her shop, and she says she remembers the colour of his hair, his high cheek bones, together with other characteristics, and she was sure she could identify him if she saw him. The Defendant was pointed out to her, and the question was put, "Is that ARTHUR ORTON?" but she said emphatically, "Certainly not." The next Witness is JAMES MARSHALL, who had lived at Wapping all his life, and was a bootmaker. He remembers ARTHUR ORTON very well, having known him before he went to America. In 1852 he had some conversation with him about going to Australia. ARTHUR said he had a difference with his father, and that he had a wish to go to Australia to try to better his condition. Then he recollects his person, his hair——

A JUROR: Light brown.

Dr. KENEALY: Yes, and he remembers ARTHUR'S high cheek bones, large head, clumsy build, slouching walk, and St. Vitus's dance. He is positive the Defendant is not ORTON. Then he is cross-examined as to this vexed question of dates, but he cannot say when he first saw ORTON. He remembers having repaired boots for ARTHUR, but he does not say that they were the large ones about which so much has been said. HENRY POUNCEBY, printer and stationer, says he knew ARTHUR very well, as distinct from EDMUND and the other brothers. ARTHUR, he says, was a man of 5 ft. 9 or 10 in. in height, was freckled, had thick lips and large hands—larger than the Defendant's—flaxen hair, and a slouching walk, with a gruffish voice. The Defendant is pointed out to him, and he says he is not a bit like the man he knew as ARTHUR ORTON. He says he remembers that he had large feet. *Then the Lord Chief Justice asks him if he remembers the size of the feet of all his acquaintances, and he says no.* Then he was questioned as to his dress, and he said he was dressed like a sailor. In fact, you will remember, Gentlemen, that when ARTHUR ORTON came back from sea he was dressed in naval costume, and sometimes wore a gold-laced cap. Several absurd questions as to dates are put to this Witness also, which of course he is unable to answer with certainty. Mr. HENRY PALMER, a clothier, of Wapping, speaks to ARTHUR exercising Shetland ponies. He remembers the colour of his hair and the shape of his head, and his strong, coarse voice. The Defendant, he said, was as unlike ARTHUR ORTON as possible. In cross-examination what I may call a *suggestio falsi* was made, and he was asked whether ARTHUR ORTON ever wore whiskers. He replied in the negative, and then several other questions were put to him in the same strain. In re-examination he says he thinks ARTHUR used to work in a blue jacket and white trousers. WILLIAM SISBEY comes next. He is a farmer, of Netley Lodge, in Hampshire. He describes ARTHUR thoroughly well, and is asked, "Is this Defendant like him?" to which he replies in the negative. ABIGAIL COCKLIN remembers ARTHUR ORTON when he was only a little boy. I did not know, as I said after I had called this Witness, that ARTHUR was so young when she knew him. If I had I should not have called her, but she was a species of godsend to the other side. Mr. Serjeant PARRY straightway questioned her as to whether he had any mark upon him. We all know that the brown mark on the Defendant is three or four inches long, and this is what my learned friend got out of the Witness: "The nursemaid said he had a little red mark, not so big as a sixpence, on his ribs. I did not see it, but the nurse told me." The learned Serjeant went on for some time, although it was all hearsay. I may be asked why I did not object; but really I had objected so much that I became tired and gave it up. Mr. Justice MELLOR, however, asked a question for which all lovers of justice will be thankful, which put the matter right. His lordship said, "How came the nurse to tell you?" Answer: "He was marked with a fruit-mark, a small mark as big as a threepenny-piece, like a red currant." There is scarcely a baby born who has not some such mark. If any of you are fathers of families you can refer to your own experience as to whether your children have not such marks.

Mr. TAYLOR (Juror): Mine have not. (A laugh.)

Dr. KENEALY: Ask your wives, and they will tell you differently.

The JUROR: I have had ocular demonstration. (Laughter.)

Dr. KENEALY: And here it may be allowable to ask—How comes it that Serjeant PARRY knows what our Witnesses can say? No one will believe that he put the question merely haphazard. Everyone must think that he had *some* knowledge beforehand. How is this? Are there traitors in our own camp? Are there persons who communicate to the Crown the secrets of the Defence? Not that this was one—for I knew nothing of it. Who tells Serjeant PARRY these things? Somebody must—and I suppose somebody did. There is the fact, Gentlemen, deal with it as you like.

Gentlemen, the next Witness is JOSEPH CLIPPINGDALE, who says he has a good recollection of ARTHUR ORTON, whom he did not see after the year 1848. He describes him as a "sort of sui generis lad;" that is, there was, I suppose, something about him which made him unlike any other person. The next Witness, CHRISTIANA PERRY, says she was in the habit of working for old ORTON, and knew ARTHUR, being in the habit of buying

meat at the father's shop. She remembers ARTHUR in 1848 and before he went to sea in 1852, the second time. She speaks of his large features, his light-brown hair, his high cheek-bones, the wires in his ears, the marks of the small-pox, and the large hands and feet. She knew him, she says, from the time when he was a boy playing about his father's shop down to 1852. She was one of those persons who went to the Pavilion Theatre for the purpose of ascertaining whether the Defendant was ARTHUR ORTON or not, and she says, "I went to see ARTHUR ORTON, but I did not see him;" that is, she went there with a full impression that she would see him, and was disappointed. In reply to Mr. Serjeant PARRY'S question, "Don't you think the Defendant is like old ORTON?" she said, "I do not." "Did you know Mrs. ORTON?" said my learned friend, and she replied, "I did, perfectly well." "Did you know Mr. ORTON?" "Yes." That nobody might be exempt from being connected with this Trial, the Royal Family were brought in.

Mr. Justice MELLOR: They must have felt much flattered by that. (Laughter.)

Dr. KENEALY: Yes, it is one of the distinctions conferred upon them in consequence of being Royal. (A laugh.) THOMAS NEWMAN, a watchman in the Metropolitan Meat Market, deposed that he used to work at Wapping in 1852, and knew ARTHUR ORTON up to 1853. Before he went to sea and after he came back ARTHUR used to carry meat for him, he says, on board ship in the docks; and he describes him as a great slop-made fellow, a man who threw his limbs about anywhere as if they did not belong to him. As regards the question of feet, he says he saw him kick over a kettle of scalding water, that he saw his naked feet after that accident, and they were extraordinarily large. "You have seen this gentleman?" I said; and he replied, "Yes; he is no ARTHUR ORTON, sir." GEORGE HICKMAN, an undertaker at Mile-end, is another Witness of the same kind. He came to the last Trial to identify the Defendant as ARTHUR ORTON, but on seeing him get out of his brougham he says he was convinced he was not ARTHUR. He speaks of the prominent cheek-bones, the upper lip, and the hands. "What sort of voice," he was asked, "had ARTHUR ORTON?" "He always spoke roughly," he answered; "I heard that gentleman speak quite the reverse." He thinks that the last time he saw ORTON was in 1852 or 1853. The next person in order is JOHN PALMER, a builder in Old Gravel-lane, who knew ARTHUR ORTON. When he last saw him, he says, he was a fair-complexioned man, tall and stiff built. The Witness was a young man at that time.

Mr. HAWKINS: It is not correct to call him a young man at that time, as he was a child only nine years old.

Dr. KENEALY: I should be sorry to be turned out of a Witness-box because I said I remembered the face of some person I have not seen since I was nine or ten years old. This Witness came home in the same ship with the Defendant, but made no acquaintance with him, although he thinks if he had been ARTHUR ORTON he would not have failed to do so. AUGUSTUS COLLINRIDGE, a master mariner, knew old ORTON. ARTHUR ORTON was accused of stealing a watch, and this man knew of it. He remembered the height and general appearance of ARTHUR ORTON, as well as the fact that he wore ear-rings. He could not trace any likeness in the Defendant to ARTHUR or any other member of the family. Here is an important thing elicited by Mr. Justice MELLOR, which I think will go far to show that there is not a word of truth in the story that this vagabond butcher, running away from his ship, who must have been in a sort of menial capacity, and the whole of whose manners were slobbering and disgusting, was received and kept in the manner stated by proud and haughty Spaniards. In answer to Mr. Justice MELLOR, he said the language spoken by ORTON was a sort of lingo such as is used by the Portuguese lightermen at Gibraltar. I must ask you to believe that Dona HALEY is mistaken, or that she has been influenced by BARRA or other persons employed by the Prosecution. The next Witness is MARY ANN BUNNIDGE, who lives at High-street, Wapping, and knew ARTHUR before he went to sea. She saw him two or three times after he came back, and was in the habit of supplying him with fish. She made a mistake which does not put her out of Court. She said he was about five feet high when he came back from sea. That is clearly a mistake, and shows that she had not been tutored. She speaks of the large hands and feet, the heavy look of the face and the general awkwardness. Mr. HAWKINS regretted that he could not have the pleasure of cross-examining this Witness. He was so taken aback with the idea of the five feet that he did not know what to do with himself. (A laugh.) I fancy she said it, meaning six. I mention this to show the strange mistakes that people do sometimes make in these matters, and also to show that she was the Witness of truth, and that she had not been told what to say. She states decidedly that ORTON was as unlike the Defendant as possible. JOSEPH STOREY only remembers ORTON down to the time he was fourteen years of age, and he can see no resemblance between him and the Defendant. THOMAS KING, a lighterman, remembers ORTON and the ship 'Middleton' in the latter part of 1848, and he also remembers the first voyage in 1813. He remembers ORTON'S hair was a light brown, the scar on the cheek, the pock-marks, the earrings, the large mouth and raw-boned fingers, and almost every characteristic which this fellow had. Then he is asked a question as to ORTON'S being "deficient" in the back, and he said that he was slightly round-shouldered, or walked with his head forward, and that in this respect he was like the rest of the ORTON family. Nothing was elicited from this Witness which weakened his testimony in the least. GEORGE SHEPHERD said he met ARTHUR ORTON in 1852, and speaks of his height and pock-marks. He also says he had a fight with him, and from that circumstance he remembers the size of his hands. The cause of the quarrel shows the brutal nature of the man ORTON, for the Witness says it arose out of his (ORTON'S) using disgusting language to the landlord's daughter in the skittle-alley of a public-house. In the fight, ORTON picked up a knife and chopped it over the fingers of the Witness, cutting the flesh, and leaving a scar which was pointed out to the Court. That is the last of the Witnesses whom I called from Wapping on the subject of ARTHUR ORTON, and I now draw your attention to the evidence of DANIEL COTTON, who saw ORTON at Santiago, in California, in 1850. COTTON is rather a remarkable man in appearance; he reminded me, by his good-humoured expression and broad shoulders, of King Henry VIII.; and the gentleman who writes the summary of this Trial for the *Daily Telegraph* said, I remember, when the Witness was called, that he reminded him of HOMER'S ULYSSES. If you look at the map of the country, you will find fifteen or eighteen Santiagos, but the one referred to was in California. At that period he was a seaman on board the brig 'Lawrence,' an American cruiser, his wife carrying on the business while he was away—a sort of thing which is, I suppose, very common in the life of sailors. The Santiago of which he speaks is, it seems, a little cove or island about two miles from the bay of Catharina, and about ten or fifteen miles from the main land. He says that he was there a fortnight or three weeks; that during that time he saw a good deal of ARTHUR ORTON, and gave him a few shillings, this being probably shortly after that young fellow had run away from his home and entered upon a wild sort of life; that he told him he was then herding cattle, sleeping near them, and that he looked hard up; that he asked him if he would like to join the brig in which he was, and replied that he would, but that the Captain on learning that he was a butcher said he did not require one, and refused to take him; and that he afterwards told him that he was trying to get to Calcutta, and wanted to go from Calcutta to Sydney. This Witness also says that ARTHUR ORTON was a big, overgrown fellow, with light hair, and 5ft. 9 or 10 inches high. COTTON was brought to the Court during the last Trial by the Rev. Mr. GORDON, a man of colour, who seems to have taken great interest in the Case for the Prosecution, for the express purpose of proving that the Defendant was ARTHUR ORTON. However, as soon as he saw the Defendant, he said, "That is not ARTHUR ORTON," and consequently he was not called as a Witness. Mr. HAWKINS asked him if he remembered seeing ARTHUR ORTON wearing earrings at Santiago, and he replied "No." It is not very likely that when he was starving in Santiago he would retain his earrings; they are the first things that would go. This man does not say that he was pitted with the small-pox or anything of that kind, thus showing that he had no disposition to exaggerate. Mr. HAWKINS described COTTON'S story as a very extraordinary one. Well, so it was, but there are a great many extraordinary things in this world. The Prosecution have had full opportunities for enquiry, and have not been able to bring a single thing against COTTON. I look upon him as a most impartial Witness. He is the only Witness I have been able to call who has given us any trace of ARTHUR ORTON from the time when he left England in 1848 till the time when he came back, having run away from his ship, or done something or other that he was anxious his family should not learn.

I now come to the third class of Witnesses in the ORTON Case—those who knew ARTHUR ORTON in Australia, and who say that the Defendant is not that person. First, there is Mr. WOOLNOUGH, a man whose appearance and manner in Court were such that he was apparently entitled to the highest credit and respect. He is a stationer at Norwood, and he was at the gold diggings at Reedy Creek at the time when ARTHUR ORTON was employed there as a butcher. He says that ARTHUR ORTON was an exceedingly awkward man in his movements, a strong man, a large-framed man, and a man 5ft. 10in. high, and that he saw him occasionally, and sometimes every day for a year, he living only about 500 yards from where ORTON was. He has only an indistinct recollection of the pock-marks, which he says were on the side of the nose. On being asked, "Does the Defendant resemble ARTHUR ORTON?" he said, "I think not; I fail to see any resemblance to him." "Have you talked to the Defendant?—Yes. Does his voice recall ARTHUR ORTON'S voice to you?—No, it does not. Is he as tall as ARTHUR ORTON?—No." Gentlemen, I think that is about as clear evidence as could well be given. Then the photograph test was tried on that Witness. I don't know exactly what photograph was put before him. The portrait I find was one of the Defendant's which had been in the possession of Lady TICHBORNE. I do not see any resemblance to him in it. It might have been as much intended for a portrait of myself, although I should not like to be so ugly as the man represented there. (A laugh.) It is utterly and perfectly unlike the Defendant, as you can see for yourselves. There were three photographs sent from Wagga-Wagga, and this is one of them. The Witness said there was something about the mouth resembling that of ARTHUR ORTON. Gentlemen, I don't see the slightest resemblance. This (pointing to the photograph) is a square face, and we know that the Defendant's face is not square.

Although this was sent home by himself, I can't trace any of the features.

Mr. TAYLOR (*Juror*): What is your object in disputing the resemblance?

Dr. KENEALY: You have been asked to lay very great stress upon a daguerreotype of ROGER TICHBORNE taken at Chili representing him with a long thin face and straight eyebrows, and if a photograph of himself sent home by the Defendant is so unlike him, am I wrong in coming to a similar conclusion with regard to the Chili daguerreotype? I may be asked how the square eyebrows got into the daguerreotype. The Defendant in lifting his eyebrows puts them into almost every shape, and that may have been the reason why the square eyebrows got into the daguerreotype.

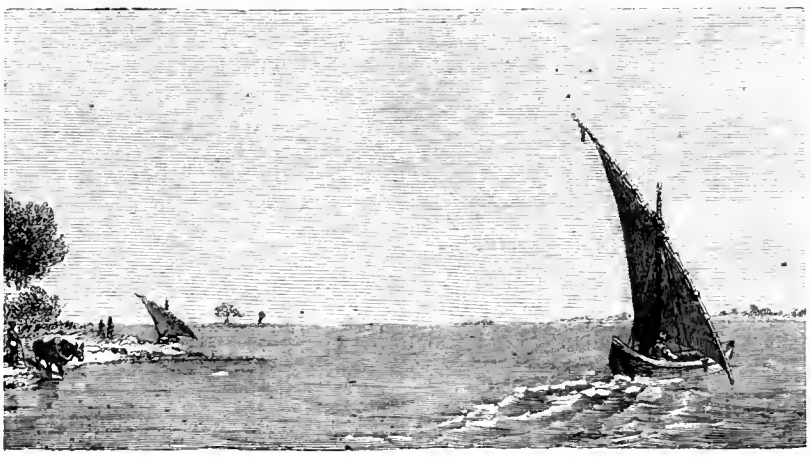
The FOREMAN: You might say that between the earlier and the later photographs there is the same difference as there is between raw and preserved ginger.

Dr. KENEALY: No two things could appear more distinct.* But the difficulties thrown in my way in this Case, by the Defendant's own proceedings, are beyond correcting. For what earthly reason did the Defendant send to England likenesses that bear no resemblance to him? Wherever I turn I am beset with shoals, or sandbanks, or breakers—and they are chiefly of the Defendant's own making. The Case for the Prosecution differs. They seem to float as easily along as in the Nile boats called Dahbeys. I am beset by winds and waves: and the absurdity is, that it is the Defendant who, like another Eolus, raises them to upset himself.

[The Court then adjourned for luncheon.]

On its reassembling,

Dr. KENEALY said: I was pointing out that the blurred and horrid and savage-looking photograph which was shown to Mr. WOOLNOUGH did not recall to him any trace of ARTHUR ORTON, for he simply says, "That appears to be the rough kind of man he was." Mr. HAWKINS, I see, was rather ashamed of the photograph as an artistic work, and I am not astonished that one who is so great a lover of art as he is should be ashamed of it. He said, "I do not put it to you as a work of art;" but, put it as he might, the Witness did not recognise it. There is a remarkable portion of Mr. WOOLNOUGH's evidence, and I lay stress upon it; but first let me mention, by the way, that this Witness, who is a tall man himself, says that he took ORTON to be about 5ft. 10in. Well, Mr. WOOLNOUGH saw him almost daily for nearly a whole year; but being asked by Mr. HAWKINS whether he had noticed a twitch in his face, he said that he had not—that he had seen nothing of the kind, not a trace of it. Now the whole tendency of the evidence with respect to ARTHUR ORTON is that the St. Vitus's dance effect disappeared after the sea voyage. I contend that he had perfectly recovered when Mr. WOOLNOUGH saw him; whereas the Defendant has always had that twitching, as ROGER TICHBORNE had. I look upon that fact as a decisive proof that the Defendant is not ORTON; though I do not say it is proof that he is TICHBORNE. Mr. WOOLNOUGH says that he went to see the Defendant at Croydon merely for curiosity, and in consequence of a remark in the Attorney-General's Summing-up. He says he knew that PHILLIPS's horses were not stolen as the Attorney-General had stated, but that they had strayed away; and therefore as a lover of fair play he resolved to come forward and test the matter for himself. He was, of course, asked the usual insulting question whether Mr. WHALLEY or Mr. ONSLOW or Mr. SKIPWORTH was there. During this Trial we have heard great complaints from the Prosecution that they did not know who was going to be called. But how, then, was it that they knew what Mrs. COCKLING was going to state about the little red mark on ARTHUR ORTON'S side? In the same manner I ask how did it happen that this innocent Prosecution find out that Lord RIVERS was at Croydon? It is clear that they had means



EGYPTIAN DAHABEY.

of discovering everything connected with the Defendant—means that I am sure I cannot fathom. [Here the Defendant communicated with his Counsel.] I am reminded by my Client that the meeting was at Bessborough-street, but that does not militate against my argument. Mr. WOOLNOUGH states that when he saw the Defendant, and told him he was an old Australian, he said very little, and hardly spoke to him at all. WOOLNOUGH was worth to him any amount of money—certainly was worth any amount of gratitude—but he hardly offered the barest thanks for the trouble he had taken. I know that many things in this Trial which I have said have greatly displeased the Defendant. I know he would like me to represent him as a kind of incarnate angel; but I must speak what I think. I am not going to disguise my thoughts; and I say that, whereas an impostor would have shown the greatest gratitude to Mr. WOOLNOUGH, this man, with his usual recklessness, did not condescend to thank him for the trouble he had taken in going down to see him at Croydon. This is part of his nature. Why, though I have myself worked for him for many months as if he had been my own flesh and blood, he has never said to me so much as "Thank you." (Laughter.)

The DEFENDANT: You should take that for granted.

Dr. KENEALY: In the same way he does not think fit to thank Mr. WOOLNOUGH. He looked at him in a sort of bull-dog manner, and when Mr. WOOLNOUGH asked him if he had been in a certain part of the country, he simply said he had not. The whole conversation seems to have been carried on by Mr. WOOLNOUGH, and the Defendant seems to have listened to it as if he was some prince or potentate in disguise, who thought it was everybody's duty to come forward and help him as a matter of course.

The DEFENDANT: I did not ask him to come.

Dr. KENEALY: He did not ask him to come! that is the way in which such a man as Mr. WOOLNOUGH is spoken of. From the conversation which took place in the presence of Lord RIVERS you will also see the sort of man the Defendant is. There was some talk about MACKENZIE'S statement, and this man, instead of listening to it, began to speak of MACKENZIE, a Detective. Could you have a more striking proof of carelessness and recklessness? One thing, however, is clear from his remark—it is evident that he knew nothing about MACKENZIE in Reedy Creek. I really wonder that Mr. WOOLNOUGH should have gone near him again; but it shows how strong is the love of justice amongst our people that they will not be deterred from coming forward in the interest of truth and right, even by the hoggish reception which they get from those whom they are seeking to serve. Mr. WOOLNOUGH goes to him again, and Goulburn River is mentioned; whereupon the Defendant says he had been clearing the run of wild horses. I can imagine nothing that would give a man more rapturous intoxication than such free and delightful sport. The very breathing of the fresh air of Australia is a luxury—a luxury that the poorest may enjoy. A far greater luxury than the finest wines to the most delicate palate is that luxury given by a munificent Providence of breathing fresh air. No one can therefore wonder at what he did. The mere sensualist and carnalist may say, "Can it be believed that a man would sacrifice his fortune of £25,000 a-year for such a life as he was leading?" What on earth is £25,000 a-year if it is not accompanied with the enjoyment of good health! I would rather be

* This hideous likeness appears Vol. I. page 165. It was done at Wagga Wagga, by the Defendant and GIBBES, neither of whom knew anything of the daguerreotypic or photographic art. Another appears in the same volume, page 204, a third at page 220. They bear hardly any likeness to the Defendant, and were systematically, for this reason, used by the Counsel for the Crown, to delude, baffle, and mislead the Witnesses for the Defence.

the poorest man in the world with the enjoyment of freedom and the pure air of nature, than come back to a fortune if it was to be saddled with the miserable condition which this man was in when he belonged to the Carabineers. Observe again the kind of blunt careless manner in which this conversation was conducted between the Defendant and Mr. WOOLNOUGH. He says that when he parted with the Defendant no arrangement was made to see him again. This artful, crafty impostor, when Mr. WOOLNOUGH said he saw ARTHUR ORTON at such a place, does not condescend to make any inquiry about him. Mr. PHILLIPS's name was mentioned, and the Defendant said he thought he must be mistaken, because the Attorney-General had not said anything about him. And that is the man whom you are going to try by a hard and fast line; and with reference to whom you are asked to make no allowance for his blunders. Then the thing is repeated. WOOLNOUGH is gravely asked after 13 or 14 years have elapsed, "When did M'MANUS give up butchering?" He said he could not remember dates. Of course he could not. They are always very strong on this question of dates. Mr. HAWKINS asked him when he missed ARTHUR ORTON, and he said he could not tell. As if any one were likely to remember such absurd things! He is similarly pressed on other points, is thumb-screwed, tortured as it were upon this question of dates. I thought the Prosecution were going to make the same attack on Lord RIVERS as they had done on others, and so I asked the Witness questions, to which he replied that Lord RIVERS took no active part in the conversation. If you could trace the interviews which took place with other Witnesses in the presence of Mr. WHALLEY, Mr. ONSLOW, and other gentlemen no more would have occurred on any occasion. If you believe that this man is ARTHUR ORTON after hearing all these things, I shall think you have taken leave of your senses. Then he is asked, "Did he describe his adventures?" "Yes; and then Mr. HAWKINS gets up and says, "I must object to that." As soon as I want to get anything out of the Witness in the interests of truth and justice, up gets Mr. HAWKINS and objects. The objection, however, was hardly allowed when he told him he had driven cattle and horses. He said the climate was dry and beautiful out there, and the life was very delightful; no wonder that he stayed there. If you were to attempt to get an Arab who lived under the dry and beautiful sky of his desert and his wilderness to come and live in a city you would not succeed, and it is the same with this man and his free existence in Australia. I will not enter into the matter of the disputed question of the maps. It must be perfectly clear to you that that is not a map of perfect accuracy, but Mr. Justice LUSH did not seem to think it of much consequence, and no man respects Mr. Justice LUSH more than I do. So much for WOOLNOUGH. I now call your attention to the evidence given by PHILLIPS. He is the same person that was mentioned in the Speech of the Solicitor-General, and was examined on the 1st of September. PHILLIPS now keeps the Norway Hotel at Truro, and was at Melbourne some time in 1854. He was at Bendigo, and he first saw ARTHUR ORTON at Black Creek there, in 1857 or 1858. He was brought up here by the Prosecution to give evidence against the Defendant, they supposing that he would be able to recognise him; but the moment he saw this gentleman he said "No, that is not ARTHUR ORTON," and he was sent back. Though he was a Witness on our behalf, he did not exhibit any extraordinary interest in the Case, and I ask you to regard him as a person who is no particular adherent to the Defendant, and therefore everything that he says is entitled to greater weight. He described ORTON as being about 5ft. 10in.; he thought he had brown hair and a full face. He lost a horse, and saw ARTHUR ORTON riding it at a sale yard at Castlemaine. He took him before the magistrates and got him committed. ORTON then gave the name of SCOTT, and he was afterwards tried in that name and acquitted. That accounts for Mr. PURCELL not finding in the books at Castlemaine any record of the Trial of ORTON. In England he would have been entered as ORTON *alias* SCOTT, or SCOTT *alias* ORTON; but Mr. PURCELL did not find the name of ORTON. Whether the Crown knew anything about it or not, I don't know, and I would rather, in mercy to the Crown, suppose they did not know it; but it clearly shows you what little reliance we ought to place upon a chance Witness like Mr. PURCELL, going out hurriedly like that. If he had made some inquiries of persons who were present when the Trial took place they would have remembered it, and it must have been found out. Instead of that, he goes there, acting upon imperfect instructions or information, and comes back here saying there was no Trial. But why the Defendant should be so mad as to say "I was with ORTON in a Trial at Castlemaine," I cannot say, when, as Mr. PHILLIPS says, he could not have had anything at all to do with it. He is brought into Court, and says, "Oh, that is not the ORTON I knew." We heard of this Witness by the merest accident, for we have had no Detectives in the Prosecution's camp to spy out their Witnesses. We heard of him accidentally, and brought him here; he is asked, "Is that gentleman ARTHUR ORTON?" and he says, "He is not." I really don't know what I am about with these statements of the Defendant, and I suppose you don't know what you are about with them. It is as clear as light that ORTON was prosecuted, and PHILLIPS never made a charge against anybody else. PHILLIPS says this man is not ORTON. And yet this Defendant in the Court of Common Pleas says, "Oh yes, I remember all about it. I was in a Trial with ORTON at Castlemaine." Can you account for it? I cannot. He seems to have been under the influence of some opiate or of the brandy when he made those statements. They are not deliberate falsehoods, because there was nothing to be gained by them. PHILLIPS cannot be mistaken; he is brought up by the Crown to say this man is ORTON, and he says he is not. And yet this Defendant coolly and calmly in the Court of Common Pleas either invents or imagines that he and ARTHUR ORTON were charged with horse-stealing at Castlemaine.

The FOREMAN: This is the Witness I spoke of as having recognised a likeness in the photograph.

Dr. KENEALY: I am much obliged to you for the stress you lay upon that; but here we had the man himself.

The FOREMAN: The likeness was taken at the time he knew him.

Dr. KENEALY: If you like I will take it that the likeness (referred to) is an undoubted likeness of the Defendant. He, however, sees the man himself. He says, in his evidence, that he told the Defendant he was not the man he had seen in 1858 at Castlemaine.

The FOREMAN: Until the end of 1858 ARTHUR ORTON was at FOSTER'S.

Dr. KENEALY: That is not far off.

The FOREMAN: But he could not be in two places at once.

Dr. KENEALY: No, no one but the Irish bird could do that; but the distance is a mere nothing out there, and I expect ORTON frequently went to Castlemaine. All I ask you to believe is that PHILLIPS at that time was in the possession of his senses. Then he is asked by Mr. HAWKINS if he is quite sure he does not see any likeness between the real ORTON and this man, and he says he cannot.

Mr. Justice MELLOR: I thought he was cross-examined by Mr. Serjeant PARRY.

Dr. KENEALY: You are quite right, my lord. There is no getting over this. It is irresistible and invincible.

The FOREMAN: What did he say about the photographs?

Mr. Justice MELLOR: He is asked if they bear any resemblance, and he says they do.

Dr. KENEALY: Then he is asked, "Did you not say to this gentleman (Mr. POLLARD) that you could not swear to him, but that he was not unlike ORTON?" and he says, "No." He was positive he was not the man, and this was really their own Witness. Language cannot be more precise than that. He was shown the photograph, and he says that he did not tell WHITFORD that it was something like the man who had stolen his horse. He said that the portrait seemed to be larger than he was then, and this all goes to show what I have been pointing out, that ARTHUR ORTON would grow into a tall thin man, and this man is the reverse. I look upon this testimony, and I ask you to look upon it, as of the highest value. Having been dropped by me the Court asked him various questions, in answer to which he said he had no papers by which to fix the date of the prosecution; and one of the Jury asked him a question which went to the whole root of the matter. He was asked how he knew his name was ORTON, and he said by hearing the people about calling him ORTON, and he knew his name was ARTHUR as well as ORTON. Considering that FOSTER's farm or works are only a moderate distance from Castlemaine, no wonder he made journeys backwards and forwards, particularly if while he was at FOSTER'S in that business he was mixed up in some league or other. What I suppose is that ARTHUR ORTON commenced a wild and lawless life after he was discovered at Santiago by Captain DANIEL COTTON, and I think I have ample grounds for saying that when he was at FOSTER'S he was in league with bushrangers and the like. All this was started by a Juror, and I feel the greatest gratitude when some of you Gentlemen ask questions which may have been overlooked by the Court and Counsel. That is one of the grand characteristics of Trial by Jury. He is asked even as to the colour of the horse, and he tells us. The Lord Chief Justice called attention to that Arbitration Case between ORTON and FOSTER. He may have been mistaken as to the year, but he was not mistaken as to the fact. Then, Gentlemen, at the wind-up of the Case even the Lord Chief Justice himself fell into an extraordinary mistake. The St. Vitus's dance of ARTHUR ORTON had been mentioned, and the Lord Chief Justice said that GIBBES had noticed the remains of it in ARTHUR ORTON: meaning this Defendant, whom my lord inadvertently and hastily confounded with that butcher. But he discovered his error, and of course he immediately withdrew from it. THOMAS TREVITT is the next person who meets ORTON in Australia. He was a butcher, and had letters of introduction to persons in Melbourne. He went to Australia in 1852, and met ORTON at a place called the Avoca. They were digging, and he described him as being there somewhere in 1856. I don't know how far the Avoca is from FOSTER'S, but I suppose the distance was not of much account. I will not, however, take the distances from their maps, as they want you and me to do. He described ORTON as a hanger-on to a settler. The settler came down with a flock of sheep, and had a butcher with him, and he gives an account of how they used to sit by the fire; and the butcher told him that his name was ARTHUR ORTON, and that his father was a butcher at Wapping. And here is the way this ORTON seems to have been enjoying himself. He went behind the Witness and knocked him down whilst he was in the act of removing

a tent which the young settler had given to him. He says that Orton had a scar across his cheek; that his shoulder-bones were large, his cheek-bones large and prominent, hair light brown. His ears had small rings in them, his hands were large, his feet uncommonly large, and he turned one of them out very much in walking. He had what the Witness would call "a villainous look." He spoke about London, and the salesmen in Newgate Market. Then he gives us another account of this ruffian. He saw him once after that with a party of bushrangers. They shot a woman with a child at her breast, who was seated on the top of a dray; he was told that one was Morgan, and the other "Big Arthur." This Witness saw the Defendant for the first time at Leicester, in November, 1872. There was a great talk in the town about him, and I think his wife induced him to go. He went to the 'White Hart' expecting to see Arthur Orton. I don't know whether Whalley and Onslow were there, but I suppose they were. The Witness says, "I said I wanted to see the gentleman of the name of Sir Roger Tichborne, and when he came down I saw him. He was a very pleasant gentleman, and quite different from the Orton I knew. Orton's name was not mentioned between us at that time. I did not see any feature that resembled him." This Witness was told about half a dozen times to be careful, until he must have thought he was going to be committed, or perhaps hanged: but he was careful, and there was nothing I can see elicited in his cross-examination to show that he was not a credible man. Orton's hair was a light brown; and he mentions this remarkable fact, that Orton had light whiskers. He distinctly remembers the whiskers, but he does not remember the tin knee. He says he came home in the 'Royal Charter,' and is asked, "Can you give the date?" There is a puzzle for you. My friend, Mr. Cooper-Wyld, informs me that in a long cross-examination, which I should have called a great waste of time, he speaks of the large ears of Arthur Orton, and in this he bears no resemblance to the Defendant. The next Witness was William Pole, a wheelwright, who was in Melbourne in 1866. It was this man whose name I mentioned in connection with that of Cotton. Captain Cotton, you will remember, saw Orton at Santiago in 1850, three years before Roger Tichborne left England; and Pole saw him in Melbourne in 1866, when this Defendant was undoubtedly in England. He came across him first at the Gap at Bendigo somewhere on the Melbourne road. He describes him as a tall, raw-boned man with prominent features, and speaks of his having sandy whiskers. This Defendant has some whiskers, but I do not think they are likely ever to have been sandy or to become so. He speaks of the scar on his face, and of Orton telling him he was a butcher. Mr. Hawkins did not like this, but the Lord Chief Justice thought that all conversations held with Arthur Orton must be given. Unless William Pole was a wilful liar Arthur Orton must have been there in 1866 when the Defendant was not there. I won't take you through that loathsome account of their having used the same comb and other horrid things elicited by Mr. Hawkins in his interesting cross-examination. He speaks of his large hands, and he says they bathed together in the Loddon. He says Orton had no mark on his body; he does not even hint at malformation; but he speaks of there being an A. O. on the comb. Then having gone so far, Mr. Hawkins asked to be allowed to comb the Witness's head after luncheon, as he had not combed it very much before. And this is the representative of the Crown and public justice in a great and grave enquiry. The Counsel for the Prosecution seem to have known all about the man; his early antecedents, his life at Leicester, his having a sister, and everything about him, but nothing was elicited to shake his testimony in the slighest degree. He said he would have given his evidence before but for the position of his brother, who is at the head of a police force in the country, and I suppose the police are no great friends of the Defendant. I don't know where this Defendant would be were not gentlemen like Mr. Evans, of Leicester, to take up his cause. There was some discussion as to how he knew his name was Orton, and he says, "Because I heard another man call him so in a public-house. He did not tell me it was Arthur Orton till we had been together for four or five days." Then one of the Jurors hits the right nail on the head when he asks the Witness, "Did you ever change your name there?" The Witness says, "Yes," he used to be called "Leicester," when they knew what town he came from in the old country. I believe that it is a very common thing for persons to do so. That shows the advantage of having the assistance of gentlemen who have such a knowledge of these things.

Mr. Taylor: I never was at the diggings.

Dr. Kenealy: I think it was one of the gentlemen who sat behind you.

Mr. Taylor: No, I think I asked the question, but I was never at the diggings.

Dr. Kenealy: Well, I am sorry you were not there, for then you would have been better able to try the Case. Then I come to the evidence of Mr. Woodyatt, a cattle dealer of Worcester, who became acquainted with Arthur Orton at the stock yards in Australia. He describes him as being about 5ft. 10in. in height, and as having large hands. He also saw him at Caryuga. The Witness says he was sometimes called Arthur and sometimes Orton, and says that he was out of one store into another, drinking with men they called "rowdies," whose object was to plunder anybody whom they could meet, and no wonder that poor Mr. Muir lost his horse. This man remembers Orton's appearance very well. He is asked to look at the Defendant, and he says, "No, if that is the man, he is very much altered." This Witness proves a fact which has not been disproved by the Prosecution. He says that he never saw any fly-fishing in Australia. You know I lay considerable stress upon this gentleman being an accomplished fly-fisher. There was no fly-fishing in Australia, and he could not have learned it at Santiago or at Wapping. He further describes Arthur Orton as having light brown hair, being big-boned, and having a face corresponding to his size. The next Witness, Benjamin Ward, went to Australia in 1857, and came back in 1865. He knew Arthur Orton when he was stock driver at Johnson's. Johnson had more than one station. He says that he used to see him with the two sons of Mr. Johnson. He describes him as being about 5ft. 9in. He says he was a kind of "light amber colour," complexion "ginger," a big boned man with a blotchy skin. He said that the only instance of his activity he had seen was his picking up a sixpence from the ground when he was on horseback and galloping. I am told that it is frequently a practice at riding schools for officers and soldiers to gallop round in a circle and pick up a sword from the ground. One or two gentlemen have been much astonished about it, but the more I read about Astley's the more I believe the wonderful things that can be done with a horse. I asked him whether the Defendant was Arthur Orton, and he said, "No, he is not an atom like him. I could pick Orton out of fifty thousand." Arthur Orton did not tell this Witness that he was passing under the name of Alfred Smith, or let him into any secrets. This Witness clearly has an idea that Ballarat Harry was murdered by Orton. Henry Bartley, a gentleman of independent means who was residing at Finsbury-park, with an income of £230 a year—which a man may live very happily upon, and I hope he does—was in New South Wales and at Bendigo for something like eight years. He got to Bendigo at the latter end of 1852, and it was then he saw Arthur Orton. He said he was "a tall, loose-made young fellow, like a sailor; he had coarse, light hair, and a bare face; he had rings in his ears, high cheek bones, and large-sized hands; he was acquainted with butchering; he showed himself quite at home in it." Then he says that the Defendant does not at all resemble the man he knew in Australia. Mr. Serjeant Parry, in the exercise of his usual discretion, did not cross-examine this Witness. Then we had William Acott, who I am glad to say is the last, who keeps the 'Swan,' at Peckham. He proves the "gold fever" to have existed. He first saw Arthur Orton at a horse sale at M'Ivor diggings, in 1855, I think. He had a scar on one of his cheeks, and I have no doubt he was the same respectable individual we have heard so much of. Acott bought a horse from him for £15, and saw him sign the receipt under the name of Read. He asked him why he passed under the name of Read, and Orton replied, "You don't always go by your right name, do you?" Acott seems to have passed under the name of "English Bill." The ending of that transaction was in accordance with all of Orton's transactions, for he stole the horse back again. He offered to "run it back" to Acott for £5, but Acott did not give it to him. He was cross-examined, but nothing was got out of him. Mr. Hawkins endeavoured to shake his testimony as to the identity, but I think he failed, and you yourselves will entertain no doubt about it. A Juror whose mind appears to have been a little shaken by the cross-examination, asks if anybody else went by the name of Orton, but the Witness said he never heard of any. That ends the testimony of my Witnesses who came to prove that Arthur Orton was not this gentleman here upon his Trial.

Gentlemen, these persons are all volunteers. They have come forward in the interests of Truth and Justice. They are not on the Government side. When Governments are to be served there are hosts of Witnesses ready. It is different where a private person is prosecuted by the Crown. We have no rewards to offer. We are as poor as church mice—the poorest, I suppose, of all creatures on earth. Yet though poverty-stricken, we are not downcast: and I hope that the verses which Hugh Mitchell, of Swanscombe, sent me a few weeks since may be fulfilled. Permit me, as we are about to break up, and as this is the last day of the Old Year, to read this Carol to you, before we separate:

Go on Kenealy and success will crown
Your noble task to cast injustice down,
The heart of England beats with jealous pride,
And Right and Justice dare not be denied.

Parry may frown, and comic Hawkins sneer,
And treat the evidence with gibe and jeer,
But sacred truth will triumph at the close
And give thee conquest over all thy foes.

[The Court adjourned at four o'clock.]

ONE HUNDRED AND FORTY-NINTH DAY.—THURSDAY, JANUARY. 1ST, 1874.

Mr. Justice MELLOR and Mr. Justice LUSH took their seats on the bench a few minutes after ten, and Lord Chief Justice COCKBURN came into Court about half an hour afterwards.

Dr. KENEALY: I begin, Gentlemen, by wishing you all a Happy New Year.

The JURY (in a body): We wish you the same.*

Dr. KENEALY: Thank you, and may my Client have, in the words of the old saw, a good deliverance. Now, Gentlemen, I call your attention to the evidence of THOMAS SUMMERS. Yesterday I was on the ORTON evidence. I am now coming to that portion of the evidence which identifies the Defendant as CASTRO. THOMAS SUMMERS was in Australia at the latter end of 1858, and he met the Defendant, and he identifies him as the same person whom he saw there. He was engaged in a transaction in which there was the sale of a horse, and he tells us that he had a receipt from the Defendant for the horse for a sum of 36 or 39 guineas, and that that receipt was lost or destroyed in 1859. He says that CASTRO signed the receipt, and put a name to it, "R. C. TICHBORNE," by which he was not known, and written in a very bad manner. The Lord Chief Justice asked him if he gave any reason for signing that name, and the Witness said the man gave no reason, and that he was almost intoxicated, but that to clear himself he was bound to have a Witness. One of the Jury asked if he made any observation, and the Witness replied that he (SUMMERS) turned round and said, "Drunken men and fools always tell the truth, have you any more names you go by?" and the man said he had not. That is the only Witness who can speak to having had a complete transaction with the Defendant as CASTRO. But I called eight Witnesses who knew ARTHUR ORTON and CASTRO as distinct persons in Australia. The first of those Witnesses was JOHN DYKE, now the landlord of the 'Rose and Crown,' at Birmingham. He was at Wagga-Wagga in 1862, and was acquainted with Mr. FENNELL, who kept the hotel there; and he afterwards became acquainted with the Defendant under the name of CASTRO. He had seen him in the billiard-room. You see the kind of loose life which the Defendant appears to have led out there, and he says that CASTRO kept a butcher's shop, and that a man named JOHN STEVENSON assisted him in slaughtering and bringing the meat up to the shop. He mentions a curious peculiarity in CASTRO—that he was shy and reserved. That was a characteristic of ROGER TICHBORNE. This gentleman knew CASTRO three years altogether; he knew him when he was married. He also knew a man named ORTON who came to Wagga-Wagga; and ORTON, he says, was also in the habit of going to the billiard-room, and he describes him as being a large muscular man, 5 feet 10 inches high; and he says that the Defendant is not like ORTON a bit, and that he has seen CASTRO and ORTON together three or four times—in the billiard-room, in the yard, and on the race-course. He says that ORTON'S voice was rougher than CASTRO'S, and that ORTON had prominent features and high cheek bones. When this Witness came to England he was requested to call on the Defendant, and he did so, and he says that the Defendant, accosting him, said, "Well CHIPS, how are you?"—that being a name by which the Witness was known at Wagga-Wagga, and he says that he recognised the Defendant as the same person he knew there as CASTRO. Application was made by Mr. HAWKINS to defer his cross-examination of this Witness on the ground of want of notice, which was acceded to, and on the 1st of September he was cross-examined at very great length, but there was nothing elicited from him which in the least invalidated his testimony. He said he had seen the Defendant cutting up the meat, but it was very seldom that any person bought less than 20lb. at a time. I submit to you that the Defendant merely cut the meat into quarters, and that it was the man he employed who cut them into small joints. To test the Witness, Mr. HAWKINS asked him about the twitching of the eye, but he said he never noticed it. Mr. HAWKINS pressed him further, making him describe ORTON, who, he said, was a full-mouthed man, with the upper jaw protruding, and that his hair was of a light sandy colour; and on a photograph being handed to him he said it was nothing like him, and that it was not like anybody that he knew. I suppose that whoever touched up that photograph in that hard style thought that he would make it resemble a fellow like ORTON more than a gentleman.

The FOREMAN: He was shown the small one—the original.

Dr. KENEALY: Oh, yes, you are quite right: the question was put to him, "You fancy it is a little like?" and he replies, "Yes, the small one looks more like ORTON; it resembles him slightly." Well, but if there is any force in what I said yesterday, that does not affect the Defendant in the least. CHARLES JANES is the man to whom I next call your attention. He, like the last Witness, appeared to me to exhibit the utmost indifference as to the interests of the Defendant. He was in Australia in 1853, and met ARTHUR ORTON out there, at a place called the Loddon River, about forty miles from Boisdale. He describes him as a tall, raw-boned, clumsy sort of man, and as being along with a gang of bushrangers. He speaks of his high cheek bones, his coarse conversation, his large hands and large feet, and then comes to a matter which is not very complimentary to the Defendant. He was asked was anyone with ORTON, and he said, "Yes, a man who represented himself as TOM CASTRO." "Was CASTRO a bushranger also?—Yes, at least he was always with the man. I considered him as one of the party." Then Mr. Serjeant PARRY asks, "Was he as bad as the rest?—Yes, as bad as the rest." Now, Gentlemen, upon that matter I must ask you not to consider that CASTRO was as bad as the rest. What I submit to you is, that curiosity may have induced the Defendant to join these men, and I invite you to believe that, notwithstanding he was found in that bad company, he never committed any criminal offence in Australia, because if he had he would most likely have been brought to justice. On the other hand, it may be said—"How is it that ARTHUR ORTON was not brought to justice, because ARTHUR ORTON was in all probability a murderer?" The only answer is that the Defendant seems to have led a far more open and exposed life, more exposed to the observation of everybody than was the life of ARTHUR ORTON; and that ARTHUR ORTON seems to have disappeared, as he has not been heard of since 1866, and he may have possibly escaped the last fangs of the law by keeping himself from observation. At all events, I ask you not to come to the conclusion that the Defendant was in their company for robbing purposes. He may have joined them. He may have said, "Now, I have tried all the varieties of life. I have mixed with generals, and colonels, and country gentlemen, and I found nothing but vanity and disappointment. I was a miserable butt among them, and was treated with scorn; I will rush into the opposite extreme. I will associate myself with these people and see how they enjoy life." That was very foolish; but the eccentricities of the human mind are so numerous that one is prepared for almost anything done by anybody. In a letter to his mother, Lady TICHBORNE, he says he had never done anything to disgrace himself. His body may have been there on some robbing expedition, and still his mind was not with them.

The FOREMAN: Has not the Defendant sworn he was at Mr. FOSTER'S at this time?

Dr. KENEALY: I have no doubt he was if you say so. I do not recollect a twentieth part of what he has said or sworn. It has made no impression on my mind; and I hope it may not on yours.

The LORD CHIEF JUSTICE (*aside to* Mr. Justice LUSH): Here's a man!

Dr. KENEALY (*not noticing*): It has been proved by some of my Witnesses that at the time ORTON was at FOSTER'S he was going about and was seen at other places. I do not suppose that they were bound to be every day at FOSTER'S. As I understand, when they are stock driving they go to different places, and while they are going about they have the opportunity of doing a good many things. This particular place where the Witness JANES saw him was only about 40 miles from Boisdale. At all events, I myself am on the whole much pleased that this man, who had a bad opinion of the Defendant and of the company in which he saw him, should come forward before you and state what he has. In reply to the Lord Chief Justice, he said he first saw the Defendant in Castlemaine in 1854. The Defendant was wandering about in the bush with various people. The Lord Chief Justice asks what they were doing there, and the Witness says they were riding about on horses. Well, this JANES evidently does not care a farthing about ORTON or CASTRO, and I would rather that he had that feeling than he should come before you as a partisan. The Witness describes ORTON as having slight pock-marks. "I know his ears were pierced, because when sitting round the camp-fires he took some small gum leaves, put their stems into the holes in his ears, and allowed the leaves to hang down on each side." JANES also said that ARTHUR ORTON and CASTRO were jointly charged with horse-stealing at Castlemaine; and yet of that charge no trace could be found in the records of the Court by Mr. PURCELL. It is one of those things which I cannot account for; but it is important to remember that this Witness speaks to the fact.

The FOREMAN: You had better adopt the principle, "De non apparentibus et de non existentibus eadem est ratio." (A laugh.)

Dr. KENEALY: That is a good legal maxim, and I hope you will apply it to my Client. The next Witness, WILLIAM HAYDEN, was acquainted with ARTHUR ORTON when he was butchering in Australia in 1851, and he gives the names of the persons by

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* On New Years' Day 1874, the Foreman of the Jury passed to Dr. KENEALY the following Note, which is now before us.

"The FOREMAN *wishes* Dr. KENEALY *a Happy New Year.*"

Up to that time, Dr. KENEALY and every member of the Jury had been on the best terms: many of them used to throw themselves in his way during the adjournment for luncheon, and used to talk for a short time with him, as he walked up and down by Westminster Abbey, breathing the fresh air, and meditating on the Trial. Some, it is true, had shown impertinence; but Dr. KENEALY endured it for the sake or his Client. The question arises, what had Dr. KENEALY done to them between this date and the end of the Trial that made the Foreman turn upon him as he did? The reader is referred to the narrative concerning the Tichborne Jurors, inserted at the end of Vol VIII.

whom he was employed, GRAHAM and WARE. He also describes him as having large hands and feet, light hair, and so on. He says that he became acquainted with the Defendant at Omao, and heard there that he had been stock-keeping for Mr. FOSTER, at Gippesland. He passed under the name of TOM CASTRO. It is an odd thing that he should be reported to be stock-keeping for Mr. FOSTER at Gippesland if he were not there. I admit that the books are against me, as his name does not appear in them, but here is the positive testimony of this Witness that he was there. Why the name is not in the book produced I cannot tell; perhaps it might have been in some other books. The Witness is asked by the Lord Chief Justice—"Did it appear to be a thing that was generally known?" and he answers, "Yes, my lord." He said he had seen enough of CASTRO to know that he was a different person from ARTHUR ORTON. In cross-examination no fair doubts were raised against the validity of the Witness's testimony. When the photograph was put into his hands by Mr. HAWKINS, the Witness said he could not recognise it. The next Witness I name is ALBERT PAVIS. He first met ARTHUR ORTON on the Deniliquin River. He described him as a "slop made man."

Mr. TAYLOR (Juror): This Witness was the Newmarket man, I believe.

Dr. KENEALY: He was the Newmarket man. He goes on to speak of the person passing under the name of ARTHUR ORTON.

Mr. TAYLOR (Juror): Or ORTON.

Dr. KENEALY: Yes, I see he said it was either ORTON or ARTHUR ORTON. He pointed the Defendant out as the man that he knew as CASTRO. He distinctly recollects seeing him at Wagga-Wagga, and says he saw the Defendant there passing under the name of CASTRO. He says that was in 1859. His evidence was attempted to be shaken by his having given his address at Dr. MEAD'S at Newmarket, but I do not see that there is anything in that. Then the Witness having made some mistake about having seen CASTRO at Wagga-Wagga in 1859, *the Lord Chief Justice thought that that invalidated the whole of this man's testimony; as if a mere mistake in a date destroyed a Witness!* I fancy that that was a hasty remark of his lordship's and I ask you to exercise your own judgment in the matter. ROBERT GARDENER is the next of those Witnesses who saw ORTON and CASTRO together in Australia. He is a butcher, carrying on business at Richmond. He went to Wagga-Wagga in 1853, and left again in 1867. He is asked if he ever saw ARTHUR ORTON, and he said he saw him in 1853 at a place 56 miles from Wagga-Wagga, and he afterwards said he saw him in 1855. He describes ARTHUR ORTON as a tall, raw-boned man, and big framed. He met him several times in Wagga-Wagga. Then he is asked, "Did you know a person who passed under the name of CASTRO?" and he said, "Yes, he was a butcher at HIGGINS'S shop." He was then asked, "Was he like ARTHUR ORTON?" and he said, "No, not at all."

Mr. Justice LUSH: What this Witness said was, that he saw ARTHUR ORTON in July, 1863, and that he was sure he saw him in 1863.

STRATFORD.

Dr. KENEALY: Then he is asked, "During what part of 1865 did you see ARTHUR ORTON and CASTRO?" and he said, "I saw them frequently for seven or eight months. ORTON was taller and thinner than CASTRO." Then he speaks of his light hair, and says that the Defendant's hair is a darker brown than that of ORTON, that he noticed his hands, that he had a sleepy, peculiar look about his eyes, and he was not at all like ORTON in the face. Then he swears that this Defendant is not ARTHUR ORTON. GEORGE JONES is the next Witness who has seen ORTON and CASTRO together. He is a carpenter and builder at Bristol. He was in Australia in 1854, and knew WILLIAM FOSTER, and was at Gippesland in the latter part of 1856, and when he was there he became acquained with a man who passed under the name of CASTRO, and who was also in the service of Mr. FOSTER. That man he now sees in the Court, and points out the Defendant, and says it is he. So that, if this Witness is telling the truth, it is clear that the books of FOSTER, which do not contain the name of CASTRO, are not to be relied upon. He also says that he became acquainted with a man named ARTHUR ORTON at Boisdale, who was employed in stock-driving by Mr. FOSTER at the station at the same time that CASTRO was. And he says they were both there when he went, and both there when he left. He describes ARTHUR ORTON as a man of an awkward gait in walking, says that he had large hands and feet, and that there was not the least resemblance between him and the man who passed as CASTRO. ORTON, he says, was taller than CASTRO. This Witness remained at Gippesland from 1856 to the latter end of 1858, and at the latter period CASTRO was selling horses, and he says that he bought a horse of him. After that he went to Reedy Creek, and was in service there at a butcher's, named M'MANUS, and he says "I was there three months, and ARTHUR ORTON was there all that time." And he distinctly negatives that this is the ARTHUR ORTON whom he knew in the service of Mr. FOSTER at Boisdale, and afterwards in the service of Mr. M'MANUS. He was cross-examined, and he says the Defendant has not such large hands as ORTON had.

A JUROR: He said CASTRO'S hair was a light brown.

Dr. KENEALY: He is asked, "Do you recollect his hair?" and he says, "I think it was what they called gingery hair." Then he says that he has seen the two men together, but that he cannot recollect on what occasion, and that it must have been at the station where they took their food, and that they took it in an outhouse. He says that he afterwards saw them together at Stratford at an hotel there playing at billiards.

The LORD CHIEF JUSTICE: The difficulty is this that at that time ARTHUR ORTON was undoubtedly in the service of WILLIAM FOSTER.

Dr. KENEALY: The distance would not render it impossible.

The LORD CHIEF JUSTICE: I mean that if a man was in the employment of another, and minding his business at one place you would not expect to find him playing at billiards in another.

Dr. KENEALY: Is that so? Do our servants never go out and play at cards or billiards when they ought to be at home? But these men were engaged in stock-driving; they were going about in all directions. If we were to take them as being in prison——

The LORD CHIEF JUSTICE: Not in prison; but as I understand, Stratford is a very long way from Boisdale.

Dr. KENEALY: I do not know the distance.

The LORD CHIEF JUSTICE: As I understand it, the two men were not at the same station together. The Witness's statement is, that when he came from Dargo on the occasion of a visit to Boisdale, he found ARTHUR ORTON there; and that when he left Dargo ARTHUR ORTON expected him at Boisdale. But, according to the Defendant's account, the two men were never at one time at the same station in the same employment. They may have been as you say at Stratford.

Dr. KENEALY: Stratford is 60 miles from Boisdale.

The LORD CHIEF JUSTICE: One Witness says 60, and another 80.

Dr. KENEALY: Of course, Gentlemen, I need hardly tell you that it is necessary for the business of stock-keeping that the drovers should take long journeys, and nothing would be more likely than that they should call at inns and play at billiards, or otherwise amuse themselves.

A JUROR: Did he say it struck him that CASTRO was not really an Englishman?

Dr. KENEALY: Yes; I rather fancy he said something of that sort.

The FOREMAN: Spoke with a French accent.

Dr. KENEALY: Whatever struck him at the time, you can have no doubt that he was speaking of the very individual who is now before you. The next Witness who speaks to having seen ARTHUR ORTON and CASTRO together is EDMUND LOCK. He went to Australia in 1855, and was employed in the gold escort to Melbourne. He says, "I have seen ARTHUR ORTON and TOM CASTRO together at Melbourne, and had reason to know ARTHUR ORTON." The next person is SAMUEL SAMUEL. He is a commission agent, and remembers seeing at Castlemaine in 1858, two men, one named CASTRO, and the other ORTON. ORTON was, he said, a strong-built man.

A JUROR: He said he was 5ft. 6in. high.

Dr. KENEALY: Yes, 5ft. 6in. is the absurd height he puts for him: but that, I say, is a proof of his honesty, and that he has not been coached. Then he is asked, "Was he as tall as CASTRO?" and he said, "I think not." He says that this gentleman (the Defendant) is not ORTON, and if he was with the men so long as he says he was, he cannot be mistaken. He does not know whether ORTON had a beard or not, but he remembers, as nearly all the other Witnesses have done, that ORTON'S hair was lighter than that of the Defendant. Gentlemen, I am glad to say that this closes the comments upon the evidence which I have to make to you with reference to ARTHUR ORTON; and, as I said before, I submit to you, with the greatest confidence, that the whole of that evidence is absolutely and conclusively in favour of the Defendant. It would be an unprecedented thing in the judicial history of the country, if, when there is such a vast preponderance not only in the number of Witnesses, but in the weight of their testimony also, over what has been presented to you by the Prosecution, you should find that this man is ORTON. I told you as I went along that, notwithstanding the fact that they had called forty or fifty Witnesses to prove him to be ORTON, you will find that the great majority of them had only the very smallest opportunity of judging whether he was the person or not; whilst the Witnesses I have called before you are of a very different character, having had a perfect knowledge of the man, and were not in any way prepossessed by WHICHER or CLARKE, or anyone else, into the idea that they were coming to swear to a certain individual. They came forward, many of them, under the impression that they were going to see ORTON; but, nevertheless, they were satisfied that he was not ORTON, and therefore volunteered their evidence. We are all persuadable, and persuade ourselves that certain things are true because we fancy that they are likely to be true, and that is the case with a great many of those Witnesses who were not left to their own unaided recollection of what ARTHUR ORTON was, but were shown photograph after photograph until they were induced to say "That is ARTHUR ORTON." When people have once committed themselves to such an assertion, it is not every one of them who has a mind strong enough to resist a request to come and give evidence; and gradually, through conversations one with another, nearly all these Wapping people actually persuaded themselves into the impression that there was a resemblance between the Defendant and ARTHUR ORTON whom they knew so long ago, and ultimately believed that he really was the man. They had no doubt read the paragraphs which had plentifully appeared in the newspapers of the nefarious attempt which this Defendant was engaged in, and some of them honestly, some rashly, and some two or three of them untruly, formed the opinion that he was ORTON. These observations do not apply to the opinions of the Witnesses I have called before you. Nothing can be more weighty than the testimony I have produced of the nine Witnesses who saw ORTON and CASTRO together in Australia. They cannot be mistaken. If you do not believe them, you must come to the conclusion that they are telling untruths. What they have said must be either truth or falsehood. There can be no medium. The preponderance in the number of my Witnesses on this point entitles me to claim at your hands the benefit of the doubt in favour of my Client. But I do not rest the case upon doubt. I claim your verdict on this issue as a matter of absolute right. I am quite sure that with the impartial minds which you will bring to bear upon it not one of you can come to the conclusion that this man is ORTON. If ever I felt confident in my life in any matter, I am convinced that the evidence in favour of my Client on this point is overwhelming. It is as irresistible as the waves of the Atlantic; nobody can get over it, and you must acquit the Defendant upon that part of the indictment. I will not admit into my mind, and I hope you will not, such nonsense as the gabble of the day, "TICHBORNE would never have acted so." Would he not? Who can say how any man will act. It is marvellous on what trifles our lot in life depends. The slightest thing appears to change the current of existence. Take the case of FRANCISCO BORJA, the friend of CHARLES the Fifth, the great Emperor. BORJA was a descendant of the House of Arragon. He was a man of singular accomplishments of every kind: acquainted with polite letters, with many languages; a great mathematician; a distinguished soldier: at all times a thoughtful and religious man. When the Empress ISABELLA died, it became BORJA'S duty to attend the body from Toledo to Granada, and to identify the dead before she was laid in the grave. When the coffin was opened, the progress of decay had advanced so far that it was impossible to make oath in the usual form. This incident forcing upon him the miserable condition of mortality, and of the nothingness of life, if there were no world beyond this, he determined to continue during the remainder of his days on earth in earnest preparation for eternity. He was at that time twenty-nine years of age: his wife died soon after: and the chords that bound him to society were thus broken. He was Duke of Gandia: and he erected on his paternal estate a Jesuit establishment—the first of the kind in Europe. Having married his eldest son and his two daughters, he put his affairs in order, and retired to the young and still struggling society of IGNATIUS LOYOLA. He became Father FRANCIS of the Society of JESUS—Father FRANCIS the Sinner, as he called himself.

The LORD CHIEF JUSTICE: Where do you find that?

Dr. KENEALY: I think it is contained in STIRLING'S Cloister Life of CHARLES the Fifth.

Now, Gentlemen, in my former Speech I made certain comments on the testimony of the French Witnesses. I pointed out then what appeared to me to be a great many incredible portions of their evidence. I don't mean to touch upon that again. The Paris Witnesses were competent to describe ROGER TICHBORNE as he appeared to them as a grown-up lad, as a young man, and as the person he was when he finally left for America; and yet, as in the case of MARY ANN LODER, whom nobody ever saw with ARTHUR ORTON, you will probably be surprised to hear—your attention has not perhaps been directed to it—that one of the Paris Witnesses was asked a question as to the appearance of ROGER TICHBORNE which was not alterable by age or health, and which is not consistent with the present appearance of the Defendant. In fact, those French Witnesses were called, as it seems to me, not to testify as to his non-identity, but to decide the Case for you. Neither the Abbé SALIS—and I beg that you will notice this remarkable characteristic of the Prosecution—nor the Père LEFEVRE, nor CHATILLON said one word about the appearance of ROGER TICHBORNE. The only person who said anything about it was Madame CHATILLON, who declared that he was not knock-kneed, nor in-kneed, and that no remarkable movement of the eyebrows existed. She never remarked whether he had small feet or small hands, but what she did remember was the rather drawn out face. She says he was of medium height, rather thin, and well-proportioned. This is the only description we are favoured with by these Paris Witnesses. GOSSEIN we should have thought would have been able, considering his long connection with Sir JAMES TICHBORNE, to give us a sort of photographic description of ROGER TICHBORNE. But, curiously enough, he merely said that he was thin, held his head erect, and had the appearance of a gentleman—a description which would apply to ten thousand people in ROGER TICHBORNE'S rank of life. He says that he never saw any peculiarity about his eyebrows or legs, or walk, and that he was very straight. I think it is a most remarkable thing that these Paris Witnesses never saw any twitching of the eyebrows in ROGER, because if anything is established beyond a doubt it is that.

The LORD CHIEF JUSTICE: There is a great conflict of evidence on that point.

Dr. KENEALY: Yes; but I say the negative is so overborne by the positive that I shall claim it as an established fact.

The LORD CHIEF JUSTICE: You are entitled to put it in that way; I thought you meant that it was not disputed.

A JUROR: GOSSEIN said ROGER had no marks on his body.

Dr. KENEALY: I shall come to that presently.

The LORD CHIEF JUSTICE: I do not think those Witnesses were asked about ROGER'S appearance.

Dr. KENEALY: That is what I say; they came not to testify, but to decide. Mr. HAWKINS and Mr. Serjeant PARRY probably had good reasons for not putting questions on that point, and it was no part of my duty to do so. They, perhaps, thought the answers they would get would not help their Case.

The LORD CHIEF JUSTICE: *Very likely they forgot to put those questions.*

Dr. KENEALY: I cannot suppose that.

The LORD CHIEF JUSTICE: The French Witnesses were the last people who saw ROGER in Europe before he finally left; and I was surprised that they were not asked as to his personal appearance at that time.

Dr. KENEALY: That is so, and they were the persons who could give the best account of him. GOSSEIN describes his eyes as having been blue, his eyebrows thick, and his hair thick and not of a dark brown, but of a light chestnut colour. The whole of that will apply to this Defendant, because I call his eyes an

ordinary blue—not violet blue, which are more rare than diamonds. He has thick eyebrows and thick hair, which, as I say, has darkened by age and in consequence of the life he has led. So much for the Paris Witnesses.

Mr. HAWKINS: This question we put to D'ARANZA: "Are you acquainted with his person—have you a distinct recollection of it?"

The LORD CHIEF JUSTICE: He was not asked the colour of his hair or eyes.

Dr. KENEALY: The only description I can find given by D'ARANZA is one which might apply to thousands of people. It is "He was not very stout, was gentlemanlike-looking, healthy, and had hair of a darkish brown colour." It was a mere farce to say, therefore, that these French Witnesses spoke as to the personal appearance of ROGER TICHBORNE. There is no account of his features from those who could give us the best description, as they saw him later than anyone else in Europe. The Abbé TOURSELLES was another of the Witnesses who came here, as I say, to decide and not to testify. There was an interval of twenty-eight years between his seeing ROGER TICHBORNE and his seeing the Defendant, and yet he says there is no likeness between them, and the only thing which warrants him in that is that ROGER TICHBORNE had fine aristocratic features which the Defendant has not. I submit that this Defendant has as aristocratic features as most Hampshire gentlemen. It is difficult to discriminate between such loose opinions as this and facts. I would not like to ask you to put aside the opinions of men like the last Witness I have mentioned, but I ask you to give it the smallest possible weight in your judgment. The Witness said he knew Sir ROGER'S father, who was a fine gentleman, not obese, but about 16 stone in weight; and I ask you, Gentlemen, to look upon it as a valuable ingredient in this Case that in height and general appearance and eyebrows the Defendant has a likeness to Sir JAMES TICHBORNE. I hardly like to say anything with regard to the way in which those French Witnesses were thrust upon us. Before I and my learned friend (Mr. MCMAHON) had had time to prepare for the Case we were to meet, these Witnesses were brought in. They were all willing Witnesses, and came over while Mr. HAWKINS was making his Speech. They might have been kept back until the ORTON Case was over as we thought the several issues in the Trial were to be gone through chronologically, and as they were not we were taken very much by surprise. I don't think I need say anything more on the subject. I have already spoken of the want of weight in their testimony, and I will not repeat it. There is one remark I will make about Madame CHATILLON, and it is this: although she knew hardly anything of ROGER TICHBORNE, yet she gives the most particular description of him.

And here, Gentlemen, before I quit this theme, I must be allowed to make one or two remarks in furtherance of what I have before said, as to the tactics employed in this Case, tactics on which I myself look with abhorrence; and it is an abhorrence

PRINCE BISMARCK.

in which I am justified when I bear in mind the ordinary proceedings in our English Courts of Justice. I am utterly opposed to anything like surprise, or feints of battle in these contests before our tribunals. They may be sharp. They may be clever. They may elicit applause or admiration from jockeys; but they cannot be approved of by honest men. I myself have no sympathy with stratagems. If I were a military man I doubt whether I should ever resort to them. I like to fight in open day, and to win by open warfare; but I should not like to deceive even an enemy into a defile and slaughter him when he was there. BISMARCK and MOLTKE accomplished this at Sedan, but it strikes me as not being war on a heroic scale. However, people differ on this. The ancients acted otherwise. The Achaians, says POLYBIUS, abhorred all manner of double-dealing in war, not reputing it a victory unless where the courage of the enemy was fairly subdued. *Eam vir sanctus et sapiens sciet eram vesse victoriam, quæ salva fide et integra dignitate parabitur.* (FLORUS i. 12). An honest and wise man, says FLORUS, will acknowledge that only to be a true victory which is obtained without a breach of faith, or blemished honour. And the ancient Fluentines, says MONTAIGNE, were so far from wishing to obtain any advantage over their enemies by surprise, that they always gave them a month's warning before they drew their army into the field by the continual tolling of a bell called Martinella.

Gentlemen, in this contest we have had none of this nobleness shown by the Prosecution. On the contrary, pettiness has been its main feature and characteristic. Counsel are not, should not ought not to be partisans. HOLT says, they are but ministers o justice (6 *Mod.* 137). In this Case has it been so? They are bound to give the *best* advice to those on whose behalf they are consulted: but they are not called upon to resort to intrigue or falsehood. They are also bound in honour, if a Case appears to be dishonest or even untenable, to withdraw from the conduct of that Case. Had I been the Solicitor-General at the first Trial, the very moment I found out that DOBINSON had given me Forgeries to use as genuine documents, I should have thrown up my brief and the Cause also and left the Court. Counsel must not act contrary to conscience: and if he has a reasonable disbelief in his Client's Cause, it is nobler for him to withdraw than to persist. (See *Gill* v. *Langher*, 1. *Crompton and Jervis*, 170.) And Lord Chief Justice HALE remarks, "The best rule *in dubiis*, is rather to incline to acquittal, than conviction." (*Pleas of the Crown*, 509.) For the *only* object of the investigation is to discover the *truth*; *R.* v. *Bull*, 9 C. and P. 32. After these authorities, I will not add a single word of my own on the duty of Barristers.*

* MR. DISRAELI ON THE PRIVILEGES OF THE BAR.

In the year 1839, Mr. DISRAELI, the present Prime Minister, having published a letter which was supposed to reflect on Mr. AUSTIN, then an eminent Queen's Counsel, the latter filed a criminal information against Mr. DISRAELI, and judgment was

And if Counsel are to act upon this high standard, the same also may we expect from our Judges. Many failures of justice take place, not because the Bench is dishonest, but because its members, even with their long and varied experience and knowledge, do not always see things as clearly as one might expect. Hence the late Lord Chief Baron POLLOCK said that "the annals of our Criminal Courts, unhappily, record many various instances where, by perjury, or mistake (especially as to identity), by blunder or misapprehension, and sometimes by the misconduct and fatal indiscretion of the accused himself, a conviction has taken place which has been considered, upon further investigation, to be erroneous."

How many, paralysed in the coils of circumstance, have perished, the victims of judicial errors! It may, indeed, be hoped that now-a-days instances of such fatal misprisions of justice are extremely rare. The reaction produced in the public mind in the early part of the present century, by the occurrence of cases of wrongful convictions, such as that of ELIZA FENNING, and by the increased sense of the value of human life, still operates beneficially. And not only is the law more humane, but those who administer it are now more cautious. Yet are we warned, from time to time, by startling exceptions, that no precaution can be too great, and that whatever protection against error is afforded by the law of evidence cannot be too unswervingly sustained. It is not very long since that two brothers were sentenced to death in the county of Limerick—and one of them was hanged—for a murder which was afterwards, in time to save the other brother, confessed by another criminal, who was himself under sentence of death for a different murder. We have not yet forgotten how PELIZZIONI was sentenced to be hanged for a murder of which he was guiltless, and for which he would have been hanged but for the persevering exertions of Mr. NEGRETTI. And it was but in 1869 that BISGROVE and SWEET were convicted, when had it not been for the timely compunction of BISGROVE, SWEET, though wholly innocent, would have been hanged. In the same year, an extraordinary case of a judicial error was brought to light by an appeal before the Imperial Court of Nancy. ADELE BERNARD, a girl of twenty-two years of age, had been brought to trial, in 1868, on a charge of infanticide. The prosecution alleged that in October, 1868, she clandestinely gave birth to a child, and threw it into a pigstye, where it was eaten. This allegation was confirmed by her own confession, both before the Judge of Instruction and in open Court. Moreover, a midwife and a parochial surgeon certified that they examined her immediately after her arrest and found traces of recent delivery. On this evidence the Correctional Tribunal sentenced her to six months' imprisonment for the concealment of the birth of a child who was not proved to have been born alive. She went to prison accordingly, and about a month later, on December 24th, she was delivered of a fine healthy child, perfectly formed, and born in altogether normal conditions. The time allowed for her appeal against a sentence which circumstances appeared to show was manifestly unjustifiable had then expired, but the public prosecutor lodged an appeal in her interest. When interrogated by the president of the Appeal Court, she said that she had been induced to make a false confession by her mother and the midwife, who told her that if she confessed the crime she would get off easily, whereas if she persisted in denying the accusation she would certainly be condemned to fifteen or twenty years' imprisonment with hard labour. Some medical evidence was produced before the Court of Appeal to show the bare possibility of a superfetation. But the Court rejected this hypothesis; held that she had been impelled by intimidation to make a confession for which there was no foundation, and reversed the verdict against her. One is reminded of the similar case of Madame DOIZE, an innocent woman who had been driven to confess herself guilty of a murder in order to get released from the torture of solitary confinement.

The case of the conviction of the BOORNE brothers for the murder of RUSSELL COLVIN is pretty well known, from the statement in *Greenleaf on Evidence*. But a full report of it has recently been published by one of the Counsel at the Trial (uncle of the late Chief Justice of the United States). In 1812, BARNEY BOORNE, his wife, two sons, STEPHEN and JESSE, a daughter and her husband, RUSSELL COLVIN, lived in the town of Manchester, Vermont. COLVIN was a man of weak intellect; at times partially insane, and accustomed occasionally to wander away for weeks without giving an account of himself. In May, 1812, he suddenly disappeared. But now years went by and he came not back. Suspicions became rife. It was remembered that the brothers BOORNE and COLVIN had not lived amicably together, and it was reported that one of the brothers stated that COLVIN was dead, and the other that "they had put him where potatoes would not freeze." An uncle of the young men dreamed three times that COLVIN came to him, and indicated that his remains lay in an old cellar hole, used as a place for burying potatoes. Then a hat was found near the homestead, and recognised as COLVIN'S; and next some bones were dug up out of a hollow stump on the property, and pronounced to be human bones. Accordingly, in 1819, the brothers were arrested. Mr. LARGEANT says:—"The country was scoured for evidence. The old cellar-hole was re-opened, and a large knife, a pen-knife, and a button were found. The large knife and button were identified as having belonged to COLVIN. The bones found in the hollow stump were brought into Court, and four physicians were called, who, after an examination, pronounced them to be the bones of a human foot, together with some toe-nails and perhaps a thumb-nail. One of the physicians, who lived at Arlington, after thinking the matter over, concluded there might after all be a doubt about it, and on examining a human skeleton at home was convinced that he had been mistaken, and the next day went into Court and retracted his former statement. The other physicians were not satisfied, and to settle the matter went to a neighbouring cemetery and had a leg that had been amputated and buried, exhumed and brought into Court, and, on comparing the two specimens, everyone was convinced that the bones alleged to be COLVIN'S were not human. This dampened the public ardour somewhat, and it is probable JESSE would have been discharged, but that on Saturday he made a statement that he believed COLVIN had been murdered, and that his brother STEPHEN was the murderer; that STEPHEN had told him the previous winter that he (STEPHEN) and COLVIN were hoeing in what was called the "Glazier lot;" that they had a quarrel, and COLVIN attempted to run away; that he struck him on the back part of his head with a club, and fractured his skull; that he (JESSE) did not know what had become of the body, but mentioned several places where it might be found. In September following, an indictment was found against both the brothers, the principal Witness being a fellow-prisoner, who testified that JESSE had made a confession to him one night after awakening much disturbed. After the indictment was found they were visited in gaol by men of character and influence, and men of the law, who declared that the case was clear against them, but if they confessed, an attempt would be made to have their sentence commuted. Thereupon, STEPHEN made a written confession (coinciding in its general substance with what circumstantial evidence there was) that he killed COLVIN, adding that it was in self-defence; but that sequel shows how inconclusive may be even a written "death-warrant" extracted from the self-condemned. The Trial took place in November. The evidence against them was wholly circumstantial, mostly unimportant, with the exception of the confessions. A verdict of murder was returned, and they were sentenced to be executed on January 28th, 1820, all efforts failing to procure a commutation. They then protested their innocence; and an advertisement was inserted in the newspapers, asking information about COLVIN. On November 29th, 1819, it attracted the notice of Mr. CHADWICK, of New Jersey,

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suffered by default. Mr. DISRAELI appeared in person, and addressed the Court in his own defence, and in mitigation of punishment. He used the following language:—

"I confess that I myself have imbibed an opinion that it is the duty of a Counsel to his client to assist him by all possible means, just or unjust, and even to commit, if necessary, a crime for his assistance or extrication. My lords, this may be an outrageous opinion, but, my lords, it is not my own. Allow me to read a description of the duty of a Counsel to a client by a great authority (Lord BROUGHAM). 'An advocate, by the sacred duty which he owes his client, knows in the discharge of that office but one person in the world: that client, and none other. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on, reckless of the consequences, if his fate should unhappily be to involve his country in confusion for his client's protection.' Here, my lords, is a sketch, and by a great master; here, my lords, is the rationale of the duties of an advocate, and drawn by a Lord Chancellor. In this, my lords, is the idea of those duties expressed before the highest tribunal of the country, by the Attorney-General of a Queen of England. According to this high authority, it is the duty of a Counsel for his client even to commit treason. If then, my lords, I have erred in my estimate of the extent of these duties, it cannot be said, my lords, that I have erred without authority. Nor can this be considered as the extravagance of a mere rhetorical ebullition. My lords, I read this passage from an edition of the speech just published by the noble orator, who, satisfied with the fame it has so long enjoyed, now deems it worthy of the immortality of his own revision, and has just published this description unaltered, after twenty years' reflection, and with its most important portions printed in capital letters. And, my lords, I ask, Is there any member of this Bar, who has had any experience, and who has had any substantial practice, any sway of business—my lords, I will say more, is there any member of this profession—I care not how noble his name or his nature, how serene his present mind, or exalted his present station—who can say that in the course of a long career, in which this irresponsible power has been exercised, there have not been instances when the memory of its employment has not occasioned him deep regret and lengthened vexation?"

We do not by any means contend for the propositions laid down either by Lord BROUGHAM or Mr. DISRAELI. We cite them simply to show what has ever been regarded by the most eminent individuals as coming within the line which duty prescribes to every advocate, and which was never questioned until his enemies sought the ruin of Dr. KENEALY.

who recognised the description as that of a man living at Dover in his State. The man was brought to Vermont, and was at once recognised and identified by scores of people as the veritable COLVIN. He was partially insane, and could give no reason for his absence, but freely admitted that the BOORNES had neither hurt him nor frightened him away. The BOORNES were released, although the Court was at a loss to know what course to pursue for the purpose.

But this is not the sole case of almost judicial murder, to which I might claim your thoughts. The annals of the courts of justice do not present a more lamentable case of erroneous decision than the following, every word of which is correct.

In the year 1788, an event took place at Dundee, which excited a great sensation all over Scotland. On the night of the 16th of February, the office of the Dundee Banking Company was broken into, and robbed of the sum of £422 2s. 6d. It was discovered that the robbery had been effected by means of a hole made in the ceiling, through which the plunderers had effected their entrance and escape. The interests of so wide a circle of persons are involved in the security of a bank, that it was natural for such an occurrence to create much stir and alarm, though the sum stolen was comparatively small. Accordingly, a reward of £150 was immediately offered for information respecting the offenders, part of the sum to be paid on conviction. For some time no discovery was made, but at length a person named ALEXANDER MACDONALD, tailor in Dundee, came forward and gave information, implicating three individuals—JAMES FALCONER and PETER BRUCE, merchants in Dundee, and JAMES DICK, late shipmaster there, in the affair of the bank robbery.

On Wednesday the 13th of August, the trial of FALCONER and BRUCE took place in the Edinburgh Justiciary Court, before Lord HAILES and other Judges. DICK had left Dundee before the charge was made against him, and appears to have been out of the way during the whole progress of the business. When MACDONALD was brought forward for examination, the leading counsel for the panels offered some objections to his testimony. The counsel declared himself able to prove that MACDONALD was a person of bad general character; that he had once stolen a bill; that he had personated an exciseman, and had made a seizure of tea under that character; besides being guilty of several other illegal acts. But the judges held that a conviction and sentence in a proper court were the only circumstances that could justify the rejection of a party's evidence in a criminal cause. Accordingly, as MACDONALD had never been tried and convicted, he was allowed to give evidence, although, in addition to the preceding objections, it was also proved that he had *claimed the reward* offered in the case now under examination; a circumstance which he himself had previously denied to the court in most positive terms.

MACDONALD deposed that, eight months before the commission of the crime, he had been requested by FALCONER, BRUCE, and DICK, to join them in a plan for robbing the bank, and had been repeatedly spoken to about the same scheme afterwards, being at the same time bound to secrecy by a terrible oath. Two other persons were concerned, according to the Witness, with the three mentioned; but either these men were out of the way, or the Court appears to have permitted him to keep the names of these parties to himself. MACDONALD then proceeded to state that FALCONER and his companions had called upon him late on the Saturday night on which the bank was robbed, and desired him, with threats, to rise out of bed and follow them to the bank. They left him, and he rose and dressed himself. On going into the street, he met two women, ANNE VALENTINE and one MENZIES, the former of whom was seeking a boy, her son. With these women he went towards the town-house, which is above the bank, the hall of the town-house being separate from the bank-office only by a single floor and ceiling in one part. In the Guildhall he saw the glimmer of a light, and conjectured that the plunderers had made their way into it. He and his companions went up the town-hall steps, and there, on looking through the keyhole, they saw FALCONER with his coat off, and BRUCE and the others engaged in fastening a rope round his waist, for the purpose of letting him down through a hole which they had made. MACDONALD saw FALCONER let down, after which he and those with him left the town-hall steps, and went back to the street. They remained there till the five plunderers came out, and were seen by them. This took place about one on the Sunday morning.

This was MACDONALD'S evidence, and it was corroborated by the women VALENTINE and MENZIES, as respected the seeing of the panels on the street and in the town-hall.

This was the whole evidence against FALCONER and BRUCE. The counter-testimony was of various kinds. The accused were persons of respectable station and character; their accusers were not. A living friend of BRUCE, who was his schoolfellow and intimate friend, declares to us that no one who knew him believed for a moment in his guilt. Again, each of the prisoners brought witnesses to prove an *alibi*, and these witnesses were of a respectable character; but, unfortunately, their testimony did not bear upon the precise hour at which the robbery was committed. Three Witnesses saw FALCONER in his own house between ten and eleven, and the latest visitor saw him in bed, complaining of illness. Three Witnesses deposed also to BRUCE being at home late on Saturday night; one person heard him reading, at twelve o'clock at night. Moreover, the Counsel for the prisoners declared that it was impossible for MACDONALD and the women to have seen the hole through which the robbers had descended into the bank, from their position at the town-hall door. Strange to say, this point, which would have utterly subverted the whole criminatory evidence, does not appear to have been thoroughly examined into.

Notwithstanding the bad character of MACDONALD, the main Witness, and the strong points in favour of the accused, Lord HAILES, the presiding Judge, summed up against them, and the Jury gave a verdict of guilty, by a plurality of voices. The prisoners were condemned to death, yet, as the Jury were divided on the case, so do the highest authorities of the land appear to have been. The unfortunate men were respited two different times. At the trial, as well as during the whole of their confinement, they uniformly denied their accession to the robbery, and all knowledge of any intention to perpetrate it. Will it be credited? These two unfortunate men, to the everlasting disgrace of the Judges, were executed at Edinburgh, on the 24th of December, 1788. "Their behaviour on the scaffold," says the 'Scots Magazine' of the day, "was devout, serious, and becoming; and in their last address they implored that mercy and forgiveness might be extended to those unhappy persons by whose testimony they had been thus untimely cut off. It is hoped that time, which unveils the dark and hidden doings of the most artful, will yet reveal to the public the whole history of this mysterious affair."

Little more than a year after the execution of these unfortunate men, who died in the prime of life, a cause was brought before the Court of Sessions, in which ALEXANDER MACDONALD, ALEXANDER MENZIES, and ANNE KERMACK were the parties on one side, while the heirs of WILLIAM BRUCE, late shipmaster in Dundee, and either father or uncle to the executed PETER BRUCE, were implicated on the other side. MACDONALD had instituted a process for the recovery of £384, for which he held a bill purporting to have been granted by WILLIAM BRUCE. The result of the trial was, that MACDONALD was found guilty of a gross fraud in obtaining the bill, and his Witnesses and accomplices convicted of direct perjury. MACDONALD was sentenced to be transported beyond the seas for fourteen years, expelled from Scotland for life, and declared infamous. MENZIES received the same sentence, with this difference, that his transmarine exile was for seven years; and in sentencing him, the Lord President declared him to be a "most infamous man, dangerous to society, and one who feared neither GOD nor man." The woman received a sentence more lenient, but was also declared infamous, according to the forms of law of the day.

The exposure of this conspiracy excited a dire suspicion in the public mind. The name of MENZIES will be remembered as having been that of one of the evidences against FALCONER and BRUCE. In short, there appeared too much reason to fear that MACDONALD had induced a band of confederates to perjure themselves on both occasions. The public thought so; for, in sentencing the man, Lord HENDERLAND said, that "had it not been for the peculiar position of the panel, he should have proposed that a public whipping be added to the punishment, but he feared the rage of the incensed populace would prove fatal to the prisoner." The Lord President also remarked, that "from what had appeared in this bill affair, there was room for a melancholy doubt whether all was right with respect to a late Trial, but that he would leave this to GOD and the prisoner's own conscience." MACDONALD, who is described as a man "possessing superior talents," and as having spoken for himself at the bill-trial with "an energy and address worthy of a better cause," had the hardihood to stand up and answer the Lord President's hint, by solemnly asseverating that FALCONER and BRUCE were really guilty of the robbery of the Dundee bank. He also made an appeal against the sentence of banishment, which produced no effect.

Although a great portion of the public was now firmly persuaded of the innocence of FALCONER and BRUCE, believing, from MACDONALD'S audacity in bringing a fraudulent claim against the aged relative of PETER BRUCE, that he was a man capable of any villainy, yet a mystery hung over it to a certain extent. However, in the middle of the year 1790, two years after the execution of FALCONER and BRUCE, an extraordinary sensation was caused in Edinburgh, by the commission of a number of mysterious robberies, the author or authors of which contrived to evade the vigilance of the authorities. These robberies followed each other in quick succession. For example, WILLIAM PROCTOR, a grave-digger, was knocked down and robbed, at the back of the Castle, on the night of July 31st. THOMAS ELLIOTT, tacksman, of Heriot House toll, was knocked down and robbed at the Sciennes, on the night of August 2nd. JAMES LOGAN was knocked down and robbed of a gold watch on the Earthen Mound, on the night of August 4th. Within the same five days alone, a housebreaking and another robbery took place. From descriptions and other circumstances, the criminal authorities were led to believe these acts, with many others, to have been committed by one daring and active man. But all their exertions were inefficient in tracking the guilty party. At length suspicion fell upon a soldier in the Castle. Enquiry and a Trial followed, when it was discovered that this soldier, WILLIAM GADESBY, then only 28 years of age, had not only committed the series of robberies which had attracted so much attention, but had carried on a similar course, with almost unexampled success and daring, from the age of 14 upwards. Since his enlisting, he had con-

trived to leave the Castle repeatedly by night; he mentioned at his Trial that hackney coaches, going in and out at late hours from the officers' barracks, afforded him his usual means of passage. This singular malefactor, whose exploits also form a theme of remark in fireside tales in Scotland, was sentenced to die on the scaffold, on the 20th of February, 1791.

Amongst his greatest crimes, though not one of those for which he suffered, must be reckoned that of his having allowed two innocent men to go to the scaffold for a crime not their own, but his. Such was the case. WILLIAM GADESBY was the robber of the Dundee Bank. The wretch MACDONALD, and the women who supported his evidence, had been actuated by the miserable desire to possess the stipulated reward, and had burdened their souls with the heavy crime of perjury in order to accomplish that object. Speaking of the execution of GADESBY, the *Annual Register* for 1791 states: "With his last breath he declared FALCONER and BRUCE, who were executed here two years ago for robbing the Dundee Bank, to be innocent of that crime, and acknowledged his own guilt!" The deed had been committed by him before entering the army.

The discovery that two innocent individuals had been judicially murdered, produced a sensation of horror in the public mind; but what the judges said or thought on the occasion is not related. Certainly, Lord HAILES—a man reputed for his acute historical researches—had much reason to blush for the part he had played in the transactiou; and in point of fact, on his head rests the great crime that had been committed, for it was chiefly owing to his summing-up that the Jury were led to decide against the accused.

It is impossible, Gentlemen, to read the Case of FALCONER and BRUCE in the present day, without an indignant sense of the mercilessness with which the laws were administered sixty years ago in Scotland. Here, upon manifestly bad and insufficient evidence, two men of good repute were put to an ignominious death, for a crime which, even had they been guilty of it, would have been far too dearly expiated by the sacrifice of two lives. It was atrocious, in the first place, to condemn on such evidence, and doubly atrocious, in the second place, to execute two men for such a crime. Judges sincerely anxious to do justice might have been expected to take some pains to sift and test the evidence, particularly by the obvious expedient of ascertaining if it were possible, from the Guildhall door, to have seen the robbers descend into the bank. None of the ordinary records of such events hint at such an inquiry having been made. And, considering the dubiety of the Case, the supreme authority might have been expected to commute the punishment. But all persons in those days intrusted with the administration of the laws, from royalty itself downwards, were hurried away by an insane anxiety to punish. Life was held as light in the balance against the most trifling article of property: and servile Juries were found to yield to the dictates of Judges, in whatever they were pleased to command. We may surely congratulate ourselves on the better spirit which has since dawned on all these parties, and the superior value which is now put on human life, invariably one of the clearest marks of an advanced civilization.

I have already presented instances of the value of circumstantial evidence in criminal cases, and of the danger which there may be in giving it more weight than is justly due to it. I now propose to narrate the case of an innocent man, who suffered death in consequence of a vicious peculiarity in the mode of giving in a verdict in Scotland.

In the month of October, 1783, JAMES HAY, JAMES ANDREWS, JAMES PATERSON, recruits in the 61st regiment of foot, then lying in Edinburgh Castle, happened to become intoxicated in a tavern a little way out of town. About seven in the evening, they set out on their return to the Castle. ANDREWS, who was only twenty-one years of age, proposed to go by the suburb of Portsburgh, to which they were very near; but HAY and PATERSON prevailed upon him to go by the walk through the Meadows, which by night is a much less frequented passage. In going along the Meadows Walk, HAY went a little in advance of his companions, and ANDREWS saw him encounter and quarrel with a stranger, whom he succeeded in throwing down. ANDREWS hastened to interfere, and soon drew off HAY, leaving the stranger (whose name was DYKES) to go where he chose. When the party of recruits got a little distance, HAY said, "ANDREWS, I've got his ticker," showing a watch which he had taken from the person of DYKES. HAY then prevailed upon ANDREWS, who was much intoxicated, to take charge of the stolen article; soon after which, they reached their quarters.

On awaking next morning, ANDREWS found himself possessed of a watch, which he was sensible was not his own, but could hardly recollect how it came into his hands. With the directness of an ingenuous mind, he immediately proceeded to the quarters of Lieutenant VERNON, to whom he surrendered the watch, in order that it might be restored to the owner. The three young men were soon after apprehended. ANDREWS, in two different declarations before Sheriff COCKBURN, told the whole truth as far as he could recollect it, with a candour which made a favourable impression on all who heard his story. He and his companions were nevertheless confined for trial. While lying in the Tolbooth, HAY made his escape. On the 22nd of December ANDREWS was brought forward for trial, PATERSON acting as evidence against him; and so clear was the proof of his having been present at the robbery, and having afterwards possessed the stolen property, that the Jury, by a majority found him guilty, but unanimously recommended him to mercy.

This verdict proceeded from a misapprehension of the Jury as to their powers. They conceived that they were only placed in the box to determine whether the facts of the accusatiou were proved; ignorant that, by the authority of all lawyers, they had the right to judge whether the guilt of the accused was such as to render him worthy to be cut off from human society. The learned and ingenious WILLIAM SMELLIE, known for his works on natural history, afterwards wrote a pamphlet to show that Jurors are Judges of law as well as of fact, and that when they think the crimes charged and proved too light to call for the punishment with which they are threatened, they are at liberty to give a Verdict of Not Guilty, in order to clear the Prisoner. This exposition, however, was too late to save the life of ANDREWS.

Immediately after ANDREWS's Trial, the Jury drew up a paper, in which they gave their reasons for recommending him to mercy, being chiefly what we have already stated. The paper was transmitted to the King, along with the report of the Court upon the Case, the Minutes of the Trial, and the evidence given thereon. But, by a letter from Lord SYDNEY, then one of the Secretaries of State, the Jury learned that no mercy was to be expected. The Jury were afterwards informed, by a letter from their agent in London, that the Foreman and some others of the Jurors had retracted their former opinion, and thought the condemned man did not deserve mercy. Lest this report should have any effect on his Majesty in Council, the Foreman wrote a letter to Lord SYDNEY, contradicting the report, and enclosing another copy of the reasons for recommending the Criminal to mercy. To this letter no official answer was received.

JAMES ANDREWS was, therefore, notwithstanding his obvious innocence, hanged on the 4th of February, 1784, being the last person executed in the Grass Market. A circumstance connected with the melancholy ceremony came to be afterwards known, and deepened the impression made by the whole transaction upon the public mind. It appears that the real Criminal, HAY, was at that moment concealed in the house of a friend, within a hundred yards of the scene of execution, and could hardly be restrained from going to the scaffold and giving himself up to Justice, in the hope of saving the innocent man. His mental sufferings during that hour are said to have been dreadful. Less striking situations have formed the materials of tragedies.

There is now but one individual of ANDREWS's Jury alive; and he, though advanced to that time of life when the feelings are apt to become deadened, can never hear the Case alluded to without tears of the bitterest regret.

Gentlemen, let us cite another case:

At the Assizes held at Kingston in the County of Surrey, March, 1748-9, RICHARD COLEMAN was indicted for that he, with two other persons unknown, on the 23rd of July last, did violently assault and mortally wound one SARAH GREEN, by which said violence she languished till the 12th September following, and then died. The first Witness (G. HOWARD) deposed that he kept the 'King's Head,' a public-house in Kennington Lane. That SARAH GREEN, the deceased was there on the 23rd July with Mr. WYNN's people, and dined with them; that she went away, but returned late that night when the company were gone; that there were three men in the house dressed like brewers' servants, but could not take upon himself to swear that the prisoner was one of these men, *for they were all taller than him.* They left his house about *eleven* o'clock at night. She called for a quartern of gin, but they not liking that, it was changed for a pint of beer. The second witness (R. LINGARD) deposed that he kept the 'Horse and Groom" at Newington: saw the prisoner pass by his door about *eleven o'clock* at night on the 23rd of July in company with a woman, and cross the road at the lower end of Kennington Lane; and heard the prisoner say to the woman, "If you will go to the 'Peacock,' I will treat you with a mug of beer," but the 'Peacock' being shut up, they went on towards London and two men were near them. The deceased asked who the two men were, on which the prisoner replied, "Pho! never mind them." He knew the prisoner because he often came to Newington to customers that dealt with his master for beer, and *was sure* he is the man he saw with the woman: it was light enough to discover his face.

The third Witness (ANN CORNER) deposed that on Saturday the 23rd July, she had been at the bean-feast along with their work-folks, and in the evening returned home. About two o'clock in the morning SARAH GREEN came, and was let in by deponent: she was in a piteous condition; her handkerchief was torn off her neck, and her clothes all wet, dirty, and gravelly. She asked her what was the matter: she cried and said she had been used in a barbarous manner by three men in the Parsonage Walk, under Newington Church. About twelve days after she (SARAH GREEN) was so bad that she was obliged to go into hospital. She *always declared* that the clerk who belonged to Mr. TAYLOR's (since BERRY'S) brewhouse *was one* of the men who had used her so ill, but did not know his name, but knew his face, and she (the deceased) *always said so* when she was in hospital.

The fourth Witness (ANNE BERRY) deposed that she was a washerwoman, and used to wash for the deceased. That after this affair, seeing by her clothes and linen that she was in a very bad way, asked what was the matter with her, she answered that she had been used in a most cruel manner by three men, who had thrown her down and violated her in the Parsonage Walk.

(Here follows a disgusting description of their treatment of her.) The deceased said she *believed* one of them *was the prisoner*. Deponent took her in a coach to hospital.

The fifth Witness (ANNE THRIFT) deposed that when Mrs. GREEN was in the hospital she saw the prisoner there, and she (the deceased) always declared to her dying day that *he was one* of the men who had used her so ill. She saw her there about three weeks before her death, when she declared *as a dying woman that he was one of the men.* She said it was Mr. TAYLOR'S Clerk, but did not know his name, *but knew him very well by sight.*

The sixth Witness (J. THOMPSON) belonging to the hospital, deposed to the deplorable condition of the deceased when admitted.

The seventh Witness (Mr. PERROT, a surgeon of the hospital) gave similar testimony, and stated that the deceased died of mortification of the parts injured.

The eighth Witness (Dr. TROTTMAN) swore that he was at a public-house in Bandy-leg-walk, where he saw the prisoner and asked him if he was not in SARAH GREEN'S company the night she was treated so cruelly? He answered "Yes, I was, and what then?" and thereupon threw a spoon in the deponent's face which he threw back: the landlord bid him answer no questions, for they were very ensnaring. COLEMAN, in his defence, said he was drunk, as by his behaviour it plainly appeared he was, which the deponent took advantage of.

When the deceased had been in hospital some time, Justice CLARKE thought it proper to have COLEMAN examined in her presence; but as there were then hopes of her recovery, and she only said he was "*present*" *when she was ill-used*, the Justice admitted him to bail. After her death, however, a Jury sat and brought in a verdict of wilful murder, and the Coroner issued a warrant for the apprehension of COLEMAN, but he absconded. A proclamation was then issued, promising a reward of £70, and he was taken at Pinner, in Middlesex, and committed.

The prisoner in his defence absolutely denied his guilt, and called the following Witnesses:

First Witness (I. TAYLOR) deposed that having a physic garden opposite the 'King's Head,' in Kennington-lane, which, he usually watched with a gun, he was there very late at night on the 23rd July: that he saw there three brewers' servants, all *tall* men, and *not in the least like* the Prisoner; and was almost sure COLEMAN was not one of the men.

Second Witness (S. PETERS, an apothecary belonging to the hospital) deposed that the deceased was brought there on the 4th August, and that at times she appeared to him to be delirious and not sensible of what she said. Being cross-examined, he owned that this was when she was in her worst state, and that she might be sensible at other times.

Third Witness (Mr. SIBYL, an ale-house keeper) deposed that the Prisoner and Mr. BERRY were at his house on the 23rd July till about *ten o'clock at night*, drinking punch, and that they went away about that time.

Fourth Witness (JANE BARRETT, mother to the prisoner's wife) deposed that her son-in-law, his wife, and Mr. ALEXANDER supped at her house in Queen-street, in the Park, on Saturday, 23rd July, and tarried there till *two o'clock in the morning.* Being asked by the Court what business she followed, answered, "I am a widow woman, and have a little maintenance," but gave no account of herself, or which way she got her living.

Fifth Witness (A. DONNELY) deposed that he heard ROBERT LINGARD (second Witness for the Crown) say that the Prisoner was a rogue and deserved to be hanged for using the woman so ill. Upon this, LINGARD was called into Court again and explained that he *might have said so*, but that he had spoken nothing to the fact that was charged upon the Prisoner, only he was *re* he saw him in her company that night.

Sixth Witness (Mr. TURNER) deposed that he was at the public-house when he heard the Prisoner talking with Mr. TROTTMAN (eighth Witness for the Crown), but believed that the Prisoner was *much in liquor*, and afterwards denied what he had then said.

The Jury, WITHOUT GOING OUT OF COURT, FOUND THE PRISONER GUILTY OF WILFUL MURDER.

At the place of execution, COLEMAN delivered to the clergyman who attended him a paper in which he solemnly declared he was in no degree conscious of the least guilt of the unnatural and inhuman crime laid to his charge, remarked on the incongruity of the evidence that had been given against him, and the character of some of the principal Witnesses on whose testimony he had, in a great measure, been convicted. COLEMAN left a wife and two infant children. His solemn declaration was subsequently proved to be *incontestably true* in the Trial of WELCH and JONES, at the Assizes held at Kingston-upon-Thames, in August, 1751, where they were indicted for the murder of SARAH GREEN, on the 23rd July, 1748.

The first Witness (J. BUSH) deposed that he was intimate with the two Prisoners; that about a year ago WELCH came to him and asked him to go with him to Kennington-common to buy chickens. They went together to the 'Green Man,' and talking about the wrongful death of one RONEY, who had been hanged in summer, WELCH called him aside, and swearing a great oath, said, "A great many people die wrongfully, and COLEMAN was one; for NOLLS, JONES and I were the persons concerned in that murder for which he was hanged; we had been at Sol's-hole drinking, and coming along Kennington-lane I met with a woman, and went with her till we came into Parsonage-walk. There NICOLLS, JONES and I violated her. What makes me think this was the woman COLEMAN suffered for is, that there were two brewers' servants with COLEMAN, and I believe she took me for COLEMAN.

The second Witness (father of the last) deposed that coming over London-bridge he met his son, who asked him to drink. He said, "Father, I am not well, and am afraid I shall die. I have something to disclose to you," saying: "COLEMAN died wrongfully, NICOLLS and the two prisoners did the deed." The deponent and his son went to the 'Golden Anchor,' and seeing JONES walking under the piazzas, beckoned to him, but he would not come. His son then went to the door and called him, when he came over and asked what he wanted. He told him his son had informed him of such a terrible thing, that it frightened him, viz., that he, NICOLLS and WELCH were concerned in the murder of SARAH GREEN. He (JONES) was all of a trembling, and said, "What signifies it? The man is hanged and the woman dead, and nobody can hurt us. We were concerned with a woman; but who can tell that was the woman COLEMAN died for?" After this he often threatened the deponent, and that he would have him in gaol, for which purpose he got a note that one Mr. ARTHUR had to arrest him for 40s., and said SAPP should serve it on him for scandalizing his son.

The third Witness (JOHN NICOLLS, the accomplice) deposed, that he knew SARAH GREEN, and had been in her company, but did not know her name. He and the Prisoners went to Sol's-hole to drink together on the 23rd July. After taking three or four pots of beer they came away intending to go home. The deponent walked about twenty yards before them, and met a woman whom he asked to drink. She said she did not care to drink there, but if he would go to the 'King's Head' she would treat him with a pot of beer. He went there and she called for a pint of beer. WELCH and JONES came in and called for a quartern of gin; they drank it and went out, bidding him good night. He saw no more of them till he came into Newington Church Walk. Then the Prisoners came up to him and took SARAH GREEN away from him by main force, as she had hold of his arm. WELCH threw her down directly. [Here follows a description of the brutal assault, in which the deponent endeavours to show that he took no part except to save the woman.] The deponent, in his cross-examination, said he never discovered this affair to anybody till after they were taken up, and though his father had often taxed him with it he never would tell him. His reason for his reticence at the time when COLEMAN suffered was that they were continually threatening him, urging also that as the woman was dead and COLEMAN taken up, nobody could hurt them.

The Prisoners had but little to say in their defence, besides denying the fact. JONES tried to persuade the Court that the Witnesses had sworn against him for the sake of the large reward (£120) offered by the borough.

The Jury were of opinion that the Prisoners only were the actors in this dismal tragedy, and found them Guilty. Sentence —Death.

While under conviction they made their confessions to the clergyman in attendance, in which they substantially corroborated the account given by their accomplice, NICOLLS, with the exception that they threw the largest share of guilt on him. They completely exonerated COLEMAN from all participation in their crime, JONES adding that he did not even know the man, but that NICOLLS on the night in question made them call him by the name of COLEMAN.

Gentlemen, there is another Case, which I desire to cite—I mean that of ELIZABETH FENNING.

On the 11th of April, 1815, ELIZA FENNING (so called in the indictment; her baptismal name was ELIZABETH) was charged at the Old Bailey, before Sir JOHN SILVESTER, Bart., Recorder of the City of London, with having administered arsenic to ORLIBAR TURNER, ROBERT GREGSON TURNER, and CHARLOTTE TURNER, his wife, with intent to murder. From about fourteen years, FENNING had been in service; and in January, 1815, being hired as cook in the family of Mr. ORLIBAR TURNER, at 68, Chancery-lane, in about seven weeks from that time the circumstances arose which led to the above accusation. The case lay in a very small compass. Poison had been administered to four persons—the three above named, and to ROGER GADSDEN, their apprentice—in dumplings, and those dumplings had been made by FENNING alone. These Witnesses swore to having experienced severe illness and vomiting. The apprentice declared on oath that a paper of arsenic, used only for killing mice, had been abstracted from a drawer in the office; that he had seen the Prisoner go to that drawer, for paper to light the fire many times; and also that she had advised him not to partake of one of the dumplings. The surgeon swore that all the symptoms attending the family were produced by arsenic. He likewise found half a teaspoonful of the same in a dish in Mr. TURNER'S house. FENNING said, "I am truly innocent of the whole charge. I am innocent. Indeed I am. I liked the place; I was very comfortable. . . As to my master saying I did not assist him, I was too ill. I had no concern with the drawer at all. When I wanted a piece of paper I always asked for it." The Prisoner called five Witnesses, who gave her the character of a good-natured and amiable disposition. She requested that the younger apprentice, THOMAS KING, should be called, as he could testify that she never went to the drawer at all, but when she asked for

paper he always gave it her. The Recorder (Sir JOHN SILVESTER, Bart., who was the Judge that tried the Case) said, "You should have had him here before." The Prisoner replied, "My lord, I desired him to be brought, and I wish him to be sent for now." The Recorder: "No, it is too late now. I cannot hear you." The Prisoner's father stepped up into the Witness-box and said, "I am the father of the unfortunate girl, my lord; if you won't hear HER, I hope you will hear ME." He spoke a few sentences of vital importance in behalf of the accused; and the Recorder put his hand out, motioning him to leave the Witness-box. He told him he could not hear him—*it was too late*—he must *go down*. The Recorder delivered his Summing-up dead against her. After the charge, the Jury, in a few minutes, brought in a verdict of GUILTY; the Recorder passed the sentence of Death; and the miserable girl was carried from the Bar, convulsed with agony, and uttering frightful screams.

Petitions were sent to the PRINCE REGENT, to the LORD CHANCELLOR and LORD SIDMOUTH in order to obtain a remission of the sentence. Inconsistencies were pointed out in the evidence of some of the Witnesses; it was shown that FENNING herself had been poisoned through eating the dumplings—a thing most unlikely if her intention had been to murder her master's family; and it was an undisputed fact that no one was killed. All, however, was of no avail. When a Petition was sent from FENNING to Mr. O. TURNER to save her life, he declared that any paper which should be drawn up he would be happy to sign it; concluding with this positive assurance, "*If there is anything which I can do for her, I will go to the top of the ladder to do it.*"—"Well, then, sir," said a gentleman, "you will sign a petition for a remission of her sentence?"—"I will with pleasure," was his reply: "and so will I," said Mr. ROBERT G. TURNER. The same gentleman who had asked Mr. TURNER to sign the petition, now remonstrated with the Recorder that he (the Recorder) had stated on the Trial in his Summing-Up two things which were *erroneous* in respect to the action of arsenic on dough and on the knives. To all this, the only reply the Recorder could make was that, "*He should enquire of his Cook.*" He appeared tremblingly alive to anything which might agitate or throw doubt upon the matter. He left the house, and Mr. R. G. TURNER saw him to the door. Mr. TURNER returned and expressed himself to this effect to the father: "THE RECORDER SAYS YOU MUST NOT SIGN ANY PETITION—*if you do it will throw suspicion on the rest of your family!*" Mr. O. TURNER was asked, "Then, sir, you will *not* sign a petition for her?" Mr. TURNER'S reply was, "I CANNOT, *sir; you hear what* THE RECORDER SAYS."

When the fatal morning had come, FENNING was addressed thus:—ELIZABETH! I most solemnly adjure you, *in the name of that* GOD, *before whose presence you are about to appear, if you know anything of the crime for which you are about to suffer, make it known.*" She replied in these words, distinctly and clearly, "*Before* GOD *then, I die* INNOCENT." When the Ordinary enunciated from the Burial Service "I am the Resurrection and the life," and passed on to the words "I know that my Redeemer liveth," FENNING was asked if she too believed it? She replied, "*Yes, and I feel happy.*" The tragic scene was soon brought to a close. Her last words were, "I am innocent." The platform fell: she raised her arms and dropped them immediately. Thus perished without a struggle, by the hands of the executioner, a female twenty-one years of age, in the prime of her youth, who seemed qualified by nature to fill a superior station in life.

The father had the corpse consigned to him. It was carried to the grave followed by himself and her mother, and six other mourners, the pall being supported by six young females in white. Several thousand spectators accompanied to the burial ground of St. George the Martyr, near Brunswick-square, where it was interred with the usual rites of the Church of England. On the return of the funeral procession the immense crowd peaceably dispersed.

Every slander was industriously circulated to damage the character of this young woman, both after her conviction and after her execution, on purpose to clear the Bench of the foul stain that rested on it.

A greater miscarriage of justice has never taken place in England than the execution of ELIZABETH FENNING. As an instance of the gross blundering of the Court before which she was tried, one of the Jurymen, EDWARD BEESLEY, was so deaf that he was obliged to have part of the evidence, which he could not hear, related to him by his brother Jurymen.

Mr. TAYLOR, an eminent solicitor still living, well knew the Prosecutors, and has seen the downfall of the whole family. The son ROBERT GREGSON TURNER, was reduced to great poverty, and although he was well versed in foreign languages, he became a mere hackney writer in Church-court, Chancery Lane; and on Mr. TAYLOR tracing him to get a Portuguese Bond translated, he found him in a low lodging-house in Buckeridge-street, St. Giles's, in a dying state, reposing on a bed of straw. On Mr. TAYLOR pressing him not to die with a lie in his mouth, and calling to his mind the stern realities of the future, he confessed that HE, and not ELIZABETH FENNING, had put the poison into the yeast dumplings. This he repeated three times, and before Mr. T. could get a third party to witness the confession, this terrible man, who had scabs upon him from the crown of his head to the soles of his feet, was ushered into the abyss of eternity.

The public, as a body, believing in the innocence of this poor young woman, were greatly in her favour; but Sir JOHN SILVESTER, the Judge, was implacable. . . . Mr. ORLIBAR TURNER, formerly a Law Stationer in Chancery-lane, the father of the *actual* culprit, was almost reduced to beggary, when Mr. TAYLOR has repeatedly had to give him small jobs of work; and ultimately, when Mr. TAYLOR was Treasurer of the Stafford's Almshouses, in Holborn, this man was on the books for admission to a vacancy. ORLIBAR TURNER at one time, it is said, had £20,000 in the Funds, and a freehold house and property at Stoke Newington worth £2,000 more; but at last he literally wanted a bit of bread; thus showing that there is the finger, the hand, the arm of GOD in all things.

Gentlemen, with one more Case I shall have done. I cite it from *Mrs. Childe's Letters from New York.* "A few years ago," she says, "a poor German came to New York, and took lodgings, where he was allowed to do his cooking in the same room with the family. The husband and wife lived in one perpetual quarrel. One day the German came into the kitchen with a clasp knife and a pan of potatoes, and began to pare them for his dinner. The quarrelsome couple were in a more violent altercation than usual; but he sat with his back towards them, and being ignorant of their language, felt in no danger of being involved in their disputes. But the woman, with a sudden and unexpected movement, snatched the knife from his hand, and plunged it into her husband's heart. She had sufficient presence of mind to rush into the street and scream 'Murder.' The poor foreigner in the meanwhile, seeing the wounded man reel, sprang forward to catch him in his arms, and drew out the knife. People from the street crowded in and found him with the dying man in his arms, the knife in his hand, and blood upon his clothes. The wicked woman swore in the most positive terms, that he had been fighting with her husband, and had stabbed him with a knife he always carried. The unfortunate German knew too little English to understand her accusation or to tell his own story. He was dragged off to prison, and the true state of the case was made known through an interpreter; but it was not believed. Circumstantial evidence was exceedingly strong against the accused and the real criminal swore unhesitatingly that she saw him commit the murder. He was executed, notwithstanding the most persevering efforts of his lawyer, JOHN ANTHON, Esq., whose convictions of the man's innocence were so painfully strong that from that day to this he has refused to have any connection with a capital case. Some years after this tragic event the woman died, and on her deathbed confessed her agency in the diabolical transaction; but her poor victim could receive no benefit from this tardy repentance; society had wantonly thrown away its power to atone for the grievous wrong."*

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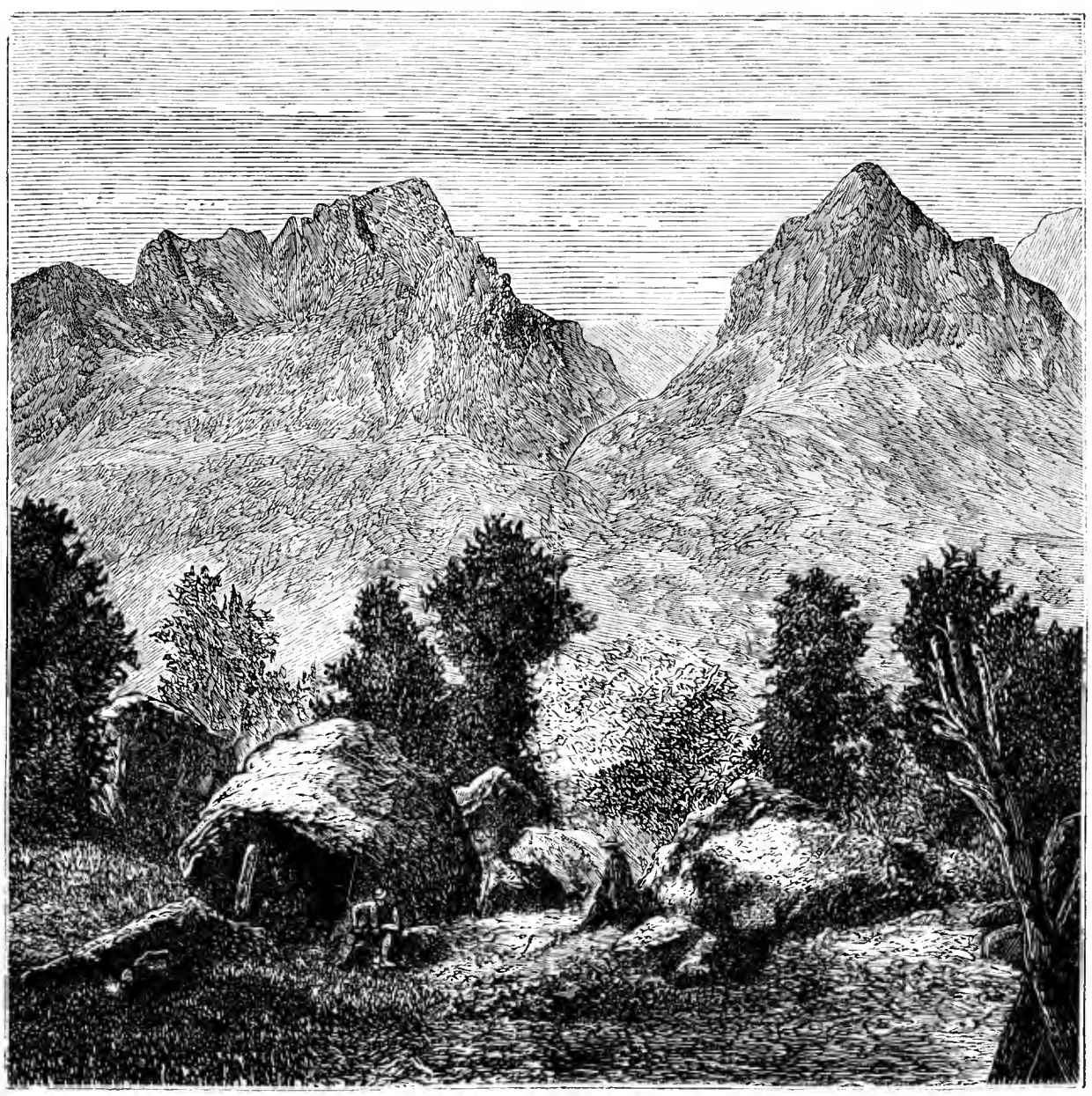
* INNOCENT MEN EXECUTED.

In the autumn of 1874, the Rev. EVAN EVANS, of Nantyglo, then on a visit to America, informed the Welsh newspapers that a man in Pennsylvania had recently on his death-bed confessed himself the murderer of DONALD BLACK, a soldier at Merthyr Tydfil, in 1831, for which crime, an innocent man, RICHARD LEWIS (locally known as DICK PENDERYN) had been hanged. This information excited much interest in Wales, where an almost universal impression of LEWIS'S innocence had from the first prevailed. At Merthyr 11,000 persons had petitioned for his life, and most of the householders in Cardiff sent up a similar memorial to Lord MELBOURNE, the then Home Secretary. One gentleman in particular, the late Mr. JOSEPH TREGELLES PRICE, of Neath Abbey, made the most strenuous exertions to save LEWIS'S life, but without eventual success. A number of documents relating to the case, collected by Mr. PRICE, have now been forwarded by his sister, Mrs. C. A. PRICE, to the Howard Association. From these papers it appears that, during a fight between the people and the military at Merthyr, the soldier BLACK received a fatal stab. RICHARD LEWIS *was condemned to death mainly on the evidence of one witness, a barber. But several respectable persons deposed to having heard this barber threaten* LEWIS *that in consequence of some previous dispute together,* "*he would be up with him, on the first chance.*" At the time of the murder LEWIS wore a blue jacket and trousers; whereas after the Trial, Mr. PRICE obtained the positive evidence of various reliable Witnesses that the man who killed the soldier wore a drab coat. A number of other persons agreed in testifying that, at the time of the soldier's being wounded, RICHARD LEWIS was in another part of the town. Mr. PRICE, who was as prudent as he was humane, went to Merthyr, and carefully collated the abundant evidence of LEWIS'S innocence. He then proceeded to London, where Lord BROUGHAM introduced him to Lord MELBOURNE. The latter, after hearing the evidence, granted a fortnight's respite. But the Judge who had tried the prisoner reported adversely: and, after all, an order issued from the Home Office that the law should take its course. Accordingly LEWIS was executed August 13, 1831, protesting with his dying breath—"*I suffer unjustly, God who knows all things knows it is so.*" And so the event has proved.—In 1865 one PELIZZIONI was sentenced to death in London. By dint of great exertions on the part of his friends, he was proved to be innocent, and received a *free pardon.*—In 1865, another Italian, GIARDINIERE, was sentenced to death at Swansea. By similar efforts he was also just saved in time and pardoned as innocent.—In 1867, J. WIGGINS was hanged in London, solemnly exclaiming when dying, "*I am innocent, innocent, innocent.*" The man

I now come to the Stonyhurst Witnesses. There, again, I do not intend to go over any of the ground I have traversed before; but I must call your attention to the fact that the Stonyhurst Witnesses are pretty nearly of the same description as the Wapping Witnesses who were called on the other side to speak in reference to ARTHUR ORTON, that is, a considerable proportion of them are persons who had had hardly any means of giving a personal description of ROGER TICHBORNE, and very few of them have done so. Probably at the present moment there is a vague notion in the minds of you Gentlemen, that the Stonyhurst Witnesses are well qualified to identify and remember ROGER TICHBORNE; but when I point you to their evidence you will see that this is not the case. The first of them was Sir JOHN LAWRENCE. He was at Stonyhurst all the time ROGER was there. He saw him on the day he came, and went out for a walk with him, his father, and the two ARUNDELLS; and he says, "I do not think I ever after did come into actual personal communication and conversation with him." The Witness added that he saw him occasionally when he went to the lectures at St. Mary's Hall, and when he used to walk with his cousin. That is extremely unsatisfactory, and hardly the kind of evidence which you could expect in a Case of this magnitude.

The LORD CHIEF JUSTICE: He was called to speak to other matters of importance besides the personal appearance of ROGER TICHBORNE.

Dr. KENEALY: When asked by Mr. HAWKINS, he describes his personal appearance. He said, "It is so long ago that I cannot pretend to give an accurate description, but as far as I recollect he was a boy of good height; he was thin, of pale complexion, light brown hair, and straight." During the two or three years that he was at Stonyhurst, when asked whether, in his judgment, the Defendant was ROGER TICHBORNE, he replied, "I do not recognize any single feature." I think he would have acted more discreetly if he had not pronounced any opinion.



CYPRESS VALLEY, AUSTRALIA.

He did not even know where ROGER TICHBORNE lived There were 180 or 190 students——

The LORD CHIEF JUSTICE: The total number was 200.

Dr. KENEALY: There were 180 ordinary students and about 20 philosophers, and this gentleman, I repeat, did not know where ROGER lived. His evidence was of the vaguest kind as regards the great question of personal identity. And that question is, after all, the great one in this Case. The Defendant's memory may have been bad, his conduct may have been reckless; but if the whole of the evidence goes to show his personal identity

he was said to have killed had the day before her death intimated her intention of killing herself. And the Coroner's Jury, after examining twenty-six Witnesses had declined to inculpate WIGGINS. The final evidence against him at his Trial was most imperfect. —In 1866, an innocent man (SMITH) narrowly escaped hanging for a murder in Cannon Street, E.C. He had been sworn to as having been seen coming out of the house where the murdered person was found (with whom he had quarrelled); stains, apparently of blood, were on his clothes; and altogether the condemnatory circumstantial evidence was perfect. Yet he ultimately proved an unquestionable *alibi*.—In 1873 two men (HAYES and SLANE) were hung at Durham for a murder committed in a scuffle in a dark passage at Spennymoor. Many respectable persons of that county believed one of them at least to be innocent. Perhaps both were. A respectable lawyer of Durham wrote to Mr. TALLACK: "HAYES is really innocent, and has been mistaken for another man who is now at large. SLANE, unfortunately, was in the passage at the time the assault was committed. I have seen the place where the deceased was assaulted; and it is impossible for the boy (the chief Witness) to have seen what he swore he did."

with ROGER TICHBORNE, I must ask you, notwithstanding all his errors, mistakes, and absurdities, to say that he is ROGER TICHBORNE. The next Stonyhurst Witness who is called to speak on that question is Mr. MANNOCK. Mr. MANNOCK was himself a philosopher, and had better opportunities than Sir JOHN LAWSON of seeing ROGER TICHBORNE, but he only remembers him up to 1847; that being the time when the Witness left. He was the gentleman who bathed with ROGER in their clothes, and he says he remembers that ROGER was thin and pale, and looked as if he were only half fed, thus certainly presenting a different appearance from that which the Defendant presents. He further says that his hair was straight and long, and cut straight round. He does not mention the colour of the hair, and therefore I suppose he has forgotten it. He describes ROGER as being narrow-chested. He may have been narrow-chested at that period, but we had the evidence of various Carabineers that he had a great broad chest. That ROGER TICHBORNE had a very different figure from that which so many Witnesses have described was demonstrated by Colonel GEORGE GREENWOOD, whom you saw in the box presenting to view a good broad pair of shoulders.

The LORD CHIEF JUSTICE: I thought Colonel GREENWOOD was rather remarkable for being tall.

Dr. KENEALY: He had broad, well-developed shoulders. I have no doubt the Jury will remember his figure.

A JUROR: He was thin.

Dr. KENEALY: He was thin, but he had good broad shoulders, and that being the case, he presented to ROGER TICHBORNE his hunting coat, and ROGER wore it. That is a complete answer to the assumption that ROGER had a narrow chest and was a shrimp of a person.

A JUROR: He weighed something more than 8st. 4lb. in 1847.

Dr. KENEALY: He may well have developed from the man he was then, and we are justified in assuming that Colonel GEORGE GREENWOOD, when he gave him the coat, was making him an appropriate present that would not cause him to look absurd in the hunting field. Mr. MANNOCK only saw the Defendant once in the other Court, and in the usual high style he says, "I am of opinion that the Defendant is not ROGER TICHBORNE," as if, as I have said before with reference to the French Witnesses, he came to decide and not to testify. In answer to the Lord Chief Justice, the Witness said he did not remember the voice of TICHBORNE. I must ask you, as I did in the case of Sir JOHN LAWSON, whether, on the question of identity, the evidence of this Witness is worth one whiff of tobacco. I next call your attention to the evidence of ROBERT HUMPHRIES, who was examined on the 4th June. He was a kind of servant of all work, and attended on the philosophers at Stonyhurst from September, 1846, to October, 1848, after which he became a gardener. He says he saw and attended upon ROGER TICHBORNE—and one would expect that he would be able to give an accurate description of him. He describes him as being slim and narrow-chested; but he has no recollection of the sound of his voice or the colour of his eyes, and he says he was about 5ft. 7in. in height when he left, that he had light brown hair; and yet with that slight knowledge of ROGER, not having seen him for 21 years, and then only having seen the Defendant in Court for a short time, he says he (the Defendant) is not ROGER TICHBORNE, and has no resemblance to him. One of the grounds on which he swears to identify is that the Defendant speaks better English than ROGER TICHBORNE did. There must be some reason, I submit, why these Witnesses speak with so little accuracy as to personal appearance. The Witness HUMPHRIES is asked several questions by me, and you will decide whether the answers he gives are true or not. He says no one has ever reminded him about anything to which he swore, and he had spoken to no one on the matter—not even in the Court when he went to see the Defendant. He says, with the exception of a conversation he had with the lawyer who took down his affidavit, he had spoken to no one about the Case. Exercise your judgment in accepting the evidence of such a Witness. This Case must have been a topic of almost hourly conversation in Stonyhurst whilst the Defendant was being cross-examined with reference to his college-life, and yet the Witness I have mentioned says that no one, not even one of the Jesuit fathers, ever spoke to him on the subject. He says, further, he has no recollection of Mr. HOFFLAND, who was a Tutor at the College, and, though he attended on ROGER for such a considerable time amongst the philosophers, he said he never saw his arms bare. How could he have forgotten HOFFLAND, if he has any powers of memory?* Mr. WATERTON is the next Witness, and he says that in his judgment the Defendant is not ROGER TICHBORNE. This Witness joined the philosophers after July 1848. It is a disputed question whether ROGER was there after 1848. I say he was, though the Prosecution say he was not. If I am right WATERTON could have had hardly any opportunity of knowing ROGER TICHBORNE. He tells us that he came so little into contact with him that he could not say whether he spoke good English or not when he left. The only times he was sure of having seen him was on the Sundy mornings when he went to see the ARUNDELLS, and the only description he can give of ROGER is this—and what can be more vague—"He was of middle size, features rather small, hands and feet medium, hair straight, with rather long forelock hanging over, which he had a habit of throwing back."

The LORD CHIEF JUSTICE: He said "he should say" his height was 5ft. 8¼in. He spoke with uncertainty on the matter.

Dr. KENEALY: Evidence that is uncertain is scarcely worth putting before the Jury, and that is why I passed over the paragraph in question, because it is controlled by the words "I should say." After the lapse of twenty-five years, having had only once the opportunity of seeing the Defendant, this Witness comes and says he is not ROGER TICHBORNE. That, I contend, is giving judgment, and not evidence.

A JUROR: He saw him in London in 1852.

Dr. KENEALY: Yes: that is so, I see; but on that occasion I think, it came out in cross-examination he had only five minutes' conversation with him.

The LORD CHIEF JUSTICE: That was at a ball.

Dr. KENEALY: They simply met at the Caledonian Rooms, bowed to each other, and parted.

Mr. Justice MELLOR: They were *vis-à-vis*.

Dr. KENEALY: ROGER at that time was in the company of Miss DOUGHTY, and no doubt he did not care to be in the company of anybody else; therefore we may presume that Mr. WATERTON had very little opportunity of seeing much of ROGER on that occasion, and the opinion he gives you, founded on such circumstances as these, I submit, can be worth very little. Although Mr. WATERTON was a prizeman at Stonyhurst, yet he did not know what a scalene triangle was. I mention that simply to show you that a man who was a prizeman was ignorant upon this point, and rather threw himself upon me not to press him.

The LORD CHIEF JUSTICE: That language does not seem altogether justified. He might have been a prizeman, but not in mathematics. Mr. WATERTON was not a philosopher, but a scholar, when he was a prizeman.

Dr. KENEALY: He was at the college eight or nine years. The prize list was produced, but it does not seem to have been read. You saw what a fine specimen of an English gentleman Mr. WATERTON was, and that he was a man of very superior intellect; and if he has forgotten a great deal of what he learned in 1848, need you be at all surprised that the Defendant should have exhibited such lamentable ignorance respecting the various questions put to him? Mr. WATERTON is a man of intellect and acute understanding; but none of you would doubt that if I had cross-examined him as I cross-examined Mr. MANNOCK, the result would have been the same.

The LORD CHIEF JUSTICE: You cannot say that. Do you mean to say that he could not have translated a page of CÆSAR?

Dr. KENEALY: Whilst I was cross-examining him he threw himself upon my mercy, as it were.

Mr. Justice MELLOR: No, that was not so. He declined to be cross-examined.

The LORD CHIEF JUSTICE: I do not think you would be justified in concluding that Mr. WATERTON could not have construed a page of CÆSAR. Moreover, it seems to me that the whole matter is beside the question. Many people, no doubt, do forget their classical lore, and a great pity it is. If they only knew how valuable it was, they would take pains to keep it up; but after all, they do not forget everything. There is not a total and radical obliteration of what they had learned from their memories.

Dr. KENEALY: I think there are one or two things in this gentleman's evidence respecting which he would hardly have declined to answer if he had recollected what the answer was. For instance, he does not remember the subject of the different books of the Iliad or of the Æneid; and it seems to me that anybody who had ever known these magnificent poems could hardly have forgotten the subjects of their respective books.

The LORD CHIEF JUSTICE: He says, "I must decline to answer your questions—I did not expect to undergo a competitive examination."

Dr. KENEALY: But he declines to state what was the metre of the Iliad, or what was the subject of the sixth Æneid.

The LORD CHIEF JUSTICE: No doubt many persons, unfortunately, forget classical learning in a great degree, but they do

* Mr. ONSLOW, at a great Meeting held at Croydon, April, 1875, thus described more fully what took place between Mr. HOFFLAND and the Claimant with reference to Preston:—"A fortnight ago, when at Edinburgh, a gentleman named MYERS told him a circumstance that occurred, which, if true, was conclusive evidence that the Claimant was no other than ROGER TICHBORNE. Mr. MYERS' uncle, a gentleman named HOFFLAND, believed at one time that the Claimant was the greatest impostor that ever lived. On visiting one of the towns in the North, where the Claimant was announced to deliver an address, Mr. HOFFLAND was induced to 'interview' him. Mr. MYERS accompanied him, and they were both introduced to the Claimant, who recognized Mr. HOFFLAND as his drawing-master at Stonyhurst. The latter was somewhat surprised at the sudden and frank recognition, but still was not satisfied. He asked the Claimant if he remembered where they parted. The Claimant at once replied—'Yes; it was at No. 8, Craddock-street, Preston.' It seemed that the house bore a questionable character, for Mr. HOFFLAND further asked the Claimant if he could remember the words used on that occasion. He replied—'Yes. You threatened to report me because you found me at that house; and I retorted by threatening to report you for having met you there.' This was only one circumstance out of many which pointed to the identity of the Claimant with Sir ROGER TICHBORNE."

not forget absolutely everything they have learnt, and that was the question really at issue.

Dr. KENEALY: I think there are one or two things which one would really have expected Mr. WATERTON to have remembered. He was asked what books of the "Iliad" he had learned, and he said he would not pledge himself to any. Therefore, I take it as clear that although this gentleman learned some books of the "Iliad" and perhaps of the "Odyssey," he does not recollect the names of any of them. He had read in Latin the works of VIRGIL, HORACE, CÆSAR, and some other authors. A question was put to him which he ought to have been able to answer—"Have you any idea of what metre the 'Iliad' is composed in?" but he replied, "I decline to answer, as I did not expect to come here to go through a competitive examination." Then I asked him, "Can you tell me what is the main subject of the sixth book of 'VIRGIL?'" and he still says "I decline to answer."

Mr. TAYLOR (Juror): I knew him when he was a boy and he did not like books so much as being out in the field.*

Dr. KENEALY: And I hope you will make similar allowances for the Defendant. We are justified in concluding that Mr. WATERTON was a good scholar when he was at Stonyhurst, but he has forgotten a great deal. He declines to answer the questions put to him, and when you find an accomplished gentleman forgetting the studies of his youth, you must, considering the life which he had led, make great allowance for what the Defendant had forgotten. The next person called to disidentify the Defendant is MATTHEW BOYLE WILLIAMS. He has no recollection of ever having spoken to ROGER TICHBORNE.

Mr. Justice MELLOR: He says he knew ROGER TICHBORNE to speak to, but he has not a distinct recollection of having spoken to him.

Dr. KENEALY: Mr. WILLIAMS is a Librarian at Cheltenham, a man of intelligence, and he must have tried to rake out of his memory all communication he had ever had with ROGER TICHBORNE. If he had had any he would not have been likely to fail in remembering it. The only description he can give of ROGER is that he was slight, had rather dark hair, was delicate looking, and had no tendency to stoutness. Mrs. STANDISH did not know ROGER TICHBORNE personally, but knew him at the Seminary; and she is called to say that ROGER TICHBORNE was never laid up in the Infirmary. She makes an extraordinary statement with regard to the doctors' books, saying that four volumes as large as this (holding up one of the volumes of printed evidence), in which the names of the students who were received into the infirmary were entered, were burnt or used for waste paper whilst she was there. Why, it would have taken at least two hundred years to fill four such volumes as those. I don't think her evidence on this matter needs comment. But I regard it as singular and unfortunate, that when *we* contend that ROGER suffered from disease at Stonyhurst, the books which might have recorded that fact, have been burnt. The next Witness called as to identity was the Rev. Mr. FITZSIMON. Though he was sure that he had met ROGER TICHBORNE, he had no recollection of the individual. "I did not pretend to recollect him, and knew nothing about him." The next Witness was the Rev. EDWARD BIRD. He gives an account of a boy who was removed to a cottage on account of a contagious disease. ROGER, he says, attended his lectures on chemistry, and he is asked for some description of him. In reply he says he was a short man with a sallow complexion, and a straight nose inclined to turn up. The nose in the Chilian daguerreotype is rather of an aquiline form, I think.

Mr. TAYLOR (Juror): Oh! dear, no.

The LORD CHIEF JUSTICE: It gave me the idea that the nose slightly turned up at the end.

DR. KENEALY: With all submission to the Lord Chief Justice, I do not see the slightest tendency to turn up. It appears to me to be straight; but the inference I would draw from this is, that we can place little reliance upon such evidence with regard to personal appearance. The Witness's description goes on: "He has a mouth with thick and not clear lips; his lower jaw was square; his hair straight and brown. I never noticed his hands and feet." There is one particular thing I will call your attention to in the evidence of Mr. BIRD. He says he sees no resemblance now between the Defendant and ROGER TICHBORNE, but he tried to see it in 1871, and he thought he succeeded in tracing one in the manner of the man; but still that resemblance was so slight that there was no doubt of non-identity. The Rev. JOHN ETHERIDGE is the next Witness as to identity; but though he was one of ROGER TICHBORNE'S masters, he took so little notice of him that he is not aware whether he (ROGER) attended his lectures or not.

Mr. Justice MELLOR: He says he did not give ROGER any lessons.

Dr. KENEALY: He heard him construe some Latin; and this Witness comes and says the Defendant is not TICHBORNE, but I submit that this evidence is not worth consideration.

The LORD CHIEF JUSTICE: The Defendant swears that he had lessons from Father ETHERIDGE, and Father ETHERIDGE says he had not.

Dr. KENEALY: I take it that his hearing him construe was giving him a lesson.

[The Court adjourned for luncheon.]

* Can it be that this TAYLOR had been at Stonyhurst? Is it not odd that SHEPPARD, a friend of Mr. BOUVERIE, and TAYLOR, an old acquaintance of Mr. WATERTON, should meet by *accident*, upon the TICHBORNE Jury?

On its re-assembling,

Dr. KENEALY continued: There is only one observation I shall make on the evidence of Mr. ETHERIDGE, and that is, that, if I have made a mistake in reference to the allusion to the solitary occasion on which he heard ROGER construe Latin, the Defendant may also have been mistaken, and, in fact, I think Mr. ETHERIDGE'S evidence goes to justify the Defendant's statement that that gentleman was one of those who taught him. The Rev. JOHN RIGBY, again, who was his immediate superior, says he never taught him himself, and cannot say who did teach him. Indeed, it would appear that this young man never was taught anything by anybody. All Mr. RIGBY can remember as to his appearance agrees with the appearance of the Defendant. He says ROGER'S features were small; the Defendant's are small. He says his eyebrows were dark, that his hair was dark brown, and that the under hair was darker than the other; and all these remarks are applicable to the Defendant. That is not the only remarkable part of his evidence. He also speaks of ROGER having "broad, bluish-grey eyes," and it is impossible a more graphic description could be given of the eyes of the Defendant. This gentleman, of course, was called by the other side, but I ask you to strike him out as a Witness for the Prosecution, and add him as a Witness for the Defence.

The FOREMAN: How about the tattoo marks? (Great laughter.)

The LORD CHIEF JUSTICE: Of course, Dr. KENEALY, you mean only with reference to the colour of the eyes?

Dr. KENEALY: On the subject of the tattoo marks, Gentlemen, I did not think it would be necessary for me to say anything more; but as you have given me a challenge, I will accept it. The Witness I am speaking of does say he observed a tattoo mark on ROGER'S arm, and remarked to him "ROGER, how could you do such a thing?" to which ROGER'S only reply was some inarticulate utterances. Father RIGBY, however, does not remember the circumstances under which he noticed the marks, nor does he remember what form they took. If they had been emblematic of Faith, Hope, and Charity, I don't think he would have forgotten the fact, and his not remembering it is, I maintain, to be taken as proof that they were not real tattoo marks, and were always changing.

The LORD CHIEF JUSTICE: Is there any Witness who states that? I believe, in fact I am sure, all who speak to the character of the marks describe them as an anchor, a heart, and a cross.

Dr. KENEALY: I think Captain MANDERS describes them as consisting of a flourish.

Mr. TAYLOR (Juror): He says he remembers the anchor distinctly, but not the other things.

Dr. KENEALY: Well, I submit that the evidence of Father RIGBY shows that they were merely assumed, and were exhibited for the purpose of exciting marvel. Hardly two Witnesses agree as to what the marks were. You remember the different descriptions given by CHATILLON and his wife. I think there is good ground for believing that they were not real at all. Indeed, I thought the tattoo theory completely exploded a long time ago, and I am quite astonished that I should have been asked a question about it. I say that Father RIGBY himself does not seem to have regarded them as real, for if he had he would have mentioned to the family at New Hall what he recollected on the subject whenever the tattoo theory was broached.

The LORD CHIEF JUSTICE: He was not at New Hall until recently.

Dr. KENEALY: He was there before the Trial commenced. Besides which, he must frequently have seen Sir EDWARD.

The LORD CHIEF JUSTICE: Sir EDWARD was never at Stonyhurst.

Dr. KENEALY: But Mr. RIGBY is very likely to have been at Tichborne when Sir EDWARD was there.

The LORD CHIEF JUSTICE: There is no evidence at all that Mr. RIGBY went to Tichborne. He was in office at Stonyhurst.

Dr. KENEALY: He went wandering about to various places, and I certainly understood that he went to New Hall, and was there at the time Miss DOUGHTY was sent there to complete her education. There is no evidence that he was ever at Tichborne, but I should think it was very likely that he was, as Lady DOUGHTY was constantly surrounded by people of that description;—and priests.

The LORD CHIEF JUSTICE: I am not aware that she was surrounded by priests.

Dr. KENEALY: Look at the letters where she says that the house was full of bishops and priests.

The LORD CHIEF JUSTICE: It is very likely that some may have been there on a visit, but that is not being surrounded by them.

Dr. KENEALY: Well, I don't think it is a very violent presumption to say that he visited there. I admit there is no absolute proof of it. At all events, it is perfectly certain that until a very late period this gentleman never mentioned anything about it to Lady DOUGHTY, and I ask you, Gentlemen, to take *it that he did not seriously believe in these tattoo marks*. He did not mention it at the Trial at the Court of Common Pleas until after Lord BELLEW gave his evidence. Don't you think it is a very significant thing that after having heard her mention these marks and make a strong point of them, he did not say a word on the subject? It shows that he did not believe in it. He leaves her and does not say a word about it.

The LORD CHIEF JUSTICE: Did you ask him whether he believed the tattoo marks to be real or not?

Dr. KENEALY: My lord, would that have been a proper question for me to put to him?

The LORD CHIEF JUSTICE: Most undoubtedly; *and as you did not venture to put it we must assume him to have believed them to be real. If he did not he would have been guilty of perjury in what he said.*

Dr. KENEALY: If I had put the question to him he probably would have replied, "How could I say whether they were real or false?"

The LORD CHIEF JUSTICE: Probably he would; but you asked him no such question, and yet you are asking the Jury to believe he did not think them real, *in which case I say he would have been guilty of perjury.*

Dr. KENEALY: I am not suggesting that this Reverend Father meant to represent the matter untruthfully; but what I put to the Jury is that he laid no stress on the circumstance, or else he would have mentioned the matter to Lady DOUGHTY the first time he saw her after the existence of the tattoo marks was made an issue in the Case.

The LORD CHIEF JUSTICE: I understand he did so.

Dr. KENEALY: Oh, no; he says it was not the first time he had met her after Lord BELLEW'S evidence, but that it was the first time they got into conversation on the Case that he told her about it.

The LORD CHIEF JUSTICE: It really comes to this, then, that you ask the Jury to assume he did not believe in the reality of the tattoo marks.

Dr. KENEALY: I think we may assume he did not look on them in a serious light, when he did not take the first opportunity of mentioning the subject to Lady DOUGHTY. However, Gentlemen, I will not trouble you further on this point, because the evidence I have given appears to me so conclusive that I wonder gentlemen like you should have thought it necessary to call my attention to it again. Only one other matter in the evidence of Father RIGBY I will refer to, and I mention this merely because so much has been made of the fact that the Defendant was married by a Wesleyan Minister. I maintain that the reason the Defendant did not go to a Roman Catholic was this: that Roman Catholics are expected to go to confession before getting married, and that, if he had done so, he would have had to admit that he was passing under a false name. That would have been involved in a real confession, and you are probably aware that it is regarded as a mortal sin to make an incomplete confession.

The LORD CHIEF JUSTICE: Would it not have been an equally mortal sin to have the marriage solemnized by a Dissenting Minister?

Dr. KENEALY: Not equally mortal a sin, I think only what is called "a venial sin," for which there is forgiveness. For a mortal sin there is none: I understood Father RIGBY to say so.

The LORD CHIEF JUSTICE: I understood him to mean that, if all other matters were right, the fact that he was passing under an assumed name would not be in itself a barrier.

Dr. KENEALY: I apprehend it would not be a barrier if a man were going to assume and bear that name for the rest of his life; but if a man got married under the name of CASTRO with the intention of afterwards claiming his estates and taking his old name of TICHBORNE, surely a priest could not be a party to such a fraud!!!

The LORD CHIEF JUSTICE: Fraud upon whom?

Dr. KENEALY: His wife.

The LORD CHIEF JUSTICE: But there would be no fraud upon her if he intended to raise her to his own rank.

Dr. KENEALY: Well, I don't know that the Defendant could be expected to go into all these refinements. This Witness says a penitent is not obliged to give his real name in confession; but of course if he did not do so he would not get his absolution.

The LORD CHIEF JUSTICE: Could a priest refuse to marry? Would he not be bound to assume that a man was passing under his right name? They look on marriage as one of the sacraments of the Church.

Dr. KENEALY: A true penitent would be bound to state what was really the truth, and then the priest would exercise his discretion. If a priest were to ask the penitent, and if the man were to say, "You are not entitled to ask my name because my name is not a sin," then the priest would be entitled to say, "I will not grant you absolution because your confession is incomplete."

The LORD CHIEF JUSTICE: The priests must have some special reason for assuming the name to be false.

Dr. KENEALY: All I say is that he would not grant him absolution if he came in a false name. This gentleman thought, for some reason of his own, that he would pass under the name of CASTRO, but it would have been a mortal sin for him to have been married in that name.

The LORD CHIEF JUSTICE: Is not a sham marriage, or what they look upon as such, quite as objectionable? Was not the solemnization of a marriage by a Dissenting Minister also a mortal sin in their eyes?

Dr. KENEALY: I did not understand him to say that any mortal sin would be committed by that.

The LORD CHIEF JUSTICE: Yes. I think I asked him myself. I don't know that any man has not a right to change his name if he likes, unless it be for the purpose of fraud. There is nothing in law to prevent him.

Dr. KENEALY: Surely if a man changed his name as the Defendant has done, it is such a fraud upon the woman as no priest would sanction.

The LORD CHIEF JUSTICE: If he had told her that his name was ROGER TICHBORNE whilst it was really CASTRO it would be a most abominable fraud; but to tell her he was CASTRO if he were in fact ROGER TICHBORNE it would be far from being a fraud.

Dr. KENEALY: There is only one other point in his evidence to which I wish to refer, and that is, that he says ROGER did not appear to be over ten stone in weight. Now, if when he was 19 ROGER appeared to be something near ten stone, that would give us an idea of solidity on his part very different from what we have heard from any of the other Witnesses. The next Witness was the Rev. MAURICE MANN. This gentleman was at Stonyhurst from 1845, and continued through 1847. He saw ROGER TICHBORNE the first day he came, but does not appear to have come into close communication with him till later. He seems to have taught him as little as CHATILLON did. He gave him some small help from time to time, and that is about the sum total of what we hear of the intellectual progress of ROGER TICHBORNE. The description he gave of him, like those of all these gentlemen, was extremely vague. He said he was very thin, and about 5 feet 5 in height; narrow-chested, and with brown hair. This was all in 1847. In 1871, twenty-four years afterwards, he saw the Defendant, and heard him under cross-examination. He heard him speak, and says he is certainly not ROGER TICHBORNE. His general appearance was quite different. That is certainly about as safe an answer as could be given, because anything more different from a slim gentleman than this it is impossible to conceive. I lay great stress upon the fact that he describes the same brown hair that all the Witnesses say ROGER TICHBORNE had, and which I say is exactly identical with the hair now before us. The next Witness is the Rev. E. BIRD, and I am going to put it to you that he is as unreliable a Witness as those gentlemen that we have already had. He left Stonyhurst in 1847, and in the autumn of 1846 he just began to deliver lectures in chemistry. All that he says is that ROGER TICHBORNE attended them more than twice. He says that he saw him every day at dinner, and that he was with him every day.

The LORD CHIEF JUSTICE: *His impression was that* ROGER *attended the whole course of lectures.*

Dr. KENEALY: He says that he could not go to them more than twice. That shows that he has not a distinct recollection of having seen him except on very few occasions. He never noticed his hands or his feet, and never saw his father. He does not seem to know very much about him. The next Witness is Major DEASE. He saw ROGER at Stonyhurst at Christmas, 1846, and in July, 1848, after he had joined the Carabineers, at the house of Mr. BAGOT, at Dublin. He never saw him after he left Dublin. Major DEASE appears to me not to have any distinct or positive recollection of ROGER TICHBORNE. He cannot describe his appearance at Stonyhurst in any way. He mentions the fact of some importance—viz., that ROGER TICHBORNE and he used to go out fishing together at Stonyhurst; and I say it was then the Defendant learned the art of fly-fishing. In Ireland they used to hunt a good deal. He saw the Defendant first at Harley-lodge, and had a conversation with him about various matters. He is not asked to describe ROGER TICHBORNE; but I suppose he would have been asked if he had been able to. Therefore we are left in ignorance as to whether he had any remembrance of him, or of his peculiarities. He mentions his smoking, and says he saw him skinning a cat once, but has no recollection of his stuffing animals. I think you will agree with me that it was the same nature that made him skin cats that led him to engage in the cutting up of beasts in after-life. Major DEASE merely comes to the conclusion that he is not ROGER TICHBORNE from the conversation at Harley-lodge. Lord BELLEW'S evidence I shall pass by. The only thing I shall take any notice of is, that Lord BELLEW speaks of ROGER TICHBORNE having bluish-grey eyes. But for the evidence which was given on the tattoo marks, I should have regarded this Witness as in my favour. After my observations upon him, I do not suppose you will think I value his testimony much, and therefore I say no more about him. These observations seem to me to exhaust the greater number of Witnesses that have referred to Stonyhurst. There are other Witnesses, but I think I may safely pass away from Stonyhurst, and come now to the testimony that is offered with reference to the Family and the Military evidence, which you remember I reserved to myself when I formerly addressed you. Before I pass away from Stonyhurst, I have to make one observation with reference to JOHN BERKELEY. It is made a point of by the Prosecution that the Defendant had no recollection of the death of JOHN BERKELEY, but there is no evidence that he was brought into communication with JOHN BERKELEY. There is no evidence to show that when he died ROGER TICHBORNE had anything to do with it.

The LORD CHIEF JUSTICE: Did not HUMPHREYS say that he had seen them in the room together? He lived in the next room to him, and I think he paid him visits with the other philosophers. One of the Witnesses said so, or I am greatly mistaken.

Dr. KENEALY: I speak of the time of his death.

The LORD CHIEF JUSTICE: They occupied adjoining rooms.

Dr. KENEALY: No doubt they did.

Mr. Serjeant PARRY read the evidence concerning this.

"Did Mr. BERKELEY'S fellow students visit him when he was ill?—Yes; many of them.

"Did ROGER TICHBORNE go to his room?—Yes; I have seen him in his room two or three times."

Dr. KENEALY: That has nothing to do with his death and funeral.

The LORD CHIEF JUSTICE: Oh yes; it was at the time of his illness. I merely call your attention to it as you said there was no evidence of it.

Dr. KENEALY: Well, from what we know of ROGER TICHBORNE, I should think he was probably amusing himself with his pipe at the time of his friend's illness; and troubled himself but little about it if he ever thought of it at all. He was hardly the man to be afflicted with grief for the death of BERKELEY—he who had no pity for the feelings of either father or mother during his dreary absence. As he was then, so is he now—careless of all things: wholly deficient in forethought or consideration. The man who sent "a withered leaf" to Lady DOUGHTY, and who is conscious of his imperfection, tamely and coolly sat by and listened when those French priests were giving their evidence; when GOSSEIN and CHATILLON were here: when D'ARANZA was in the box: every one of whom in all probability knew of his malformation: knew why he had been kept in petticoats: knew why he had been devoted to the Virgin: knew why he was not allowed to associate with other boys by his mother. And yet though these and others might have proved the most material of facts, not one syllable does he hint to me, or my learned friend, throwing light upon this important matter. And yet we are told that he is not TICHBORNE, because he forgets all about one BERKELEY, of whom perhaps he never thought seriously during one moment in his life.

As I have alluded almost inadvertently again to the "withered leaf," I think I ought to state, what I read the other day, about the same symbol having been used on a memorable occasion.* Count JULIAN of Spain, who is so noted in historic annals, was the Gothic Governor of Ceuta when the Saracens were advancing against the province of which that city was the capital. He applied for aid to his suzerain: and as the allegiance paid by provincial governors in those days was little more than nominal, RODERIC demanded that the Count should entrust him with his daughter as a hostage before sending the required succour. The young lady, whom the Spaniards call FLORINDA, and the Saracens CUBA, was accordingly sent to the Court of Toledo, which was at this period the most brilliant in Europe. According to the Arabs, FLORINDA was kept by her father's friends in Oriental seclusion, until accidentally seen by the king; but the Christian writers declare that she mixed freely in the pleasures of the Court and encouraged the attentions of RODERIC, who lived very unhappily with his queen. When solicited to become a royal mistress, she peremptorily refused; the king had recourse to violence, and then, stung by the bitterness of her reproaches, kept her under strict guard lest she should communicate her wrongs to her father. With some difficulty she obtained permission to send Count JULIAN some robes embroidered with her own hands, and in the parcel she enclosed a *withered leaf*, emblematic of the blight that had fallen upon her fame. JULIAN understood the hint, he hastened to Court to bring his daughter home that she might see her mother, who was dangerously ill. RODERIC, having previously bound the lady by an oath of secrecy, consented; but she embraced the first opportunity of revealing to her father the author of her disgrace. At the audience of leave, RODERIC urged JULIAN speedily to return, and to bring with him some of the celebrated hawks of Africa. The Governor replied, "Doubt not, O King, that I will soon be back, and bring thee such hawks as thou never sawest in thy life." No sooner did he return to Africa, than he entered into communication with the Saracens and induced them to undertake the conquest of Spain.

The LORD CHIEF JUSTICE: Where do you find that?

Dr. KENEALY: My lord, it is in Dr. COOKE TAYLOR'S *Traits of Saracenic Chivalry*.

Gentlemen, there was one person, who would have been a valuable Witness, Mr. EDWARD BERKELEY, who was with ROGER TICHBORNE at Stonyhurst, and he is stated to be alive, but Mr. EDWARD BERKELEY is not called.† As to the letters A.M.D.G. (*Ad majorem Dei gloriam*) and L.D.S. (*Laus Deo semper*) I would ask you to believe that there is no evidence of knowledge of them being brought home to ROGER TICHBORNE. You are left to imagine that he must have been taught the meaning of these initials, but it was for the Prosecution to prove such a knowledge, and on their failure to do so I ask you not to act upon imagination, and not to suppose that the knowledge of the meaning of the sentences was conveyed to ROGER TICHBORNE.

Gentlemen, before I leave Stonyhurst and its scholars and philosophers, I hope for ever, may I be pardoned if I read to you the language of Mr. STAMMERS, a member of the Bar, on the subject of dealing with such persons as Lord BELLEW. I fully adopt every word of it; and as I have been subjected to the most virulent abuse, for some of my questions to Lord BELLEW, I hope I may cite this authority in justification. When a Witness, says this lawyer, makes his appearance in a Court of Justice, it is necessary that the Jury should be informed with regard to two things: First, what has he to say? Secondly, what kind of person is it who says so? The first of these inquiries is usually satisfied by the examination-in-chief; the second is left to be ascertained by the adverse Counsel upon cross-examination.

Supposing, then, that the instructions of the advocate, whose duty it becomes to cross-examine the Witness, contain a statement of facts tending to show that he is in any way a person destitute of that moral sense which is requisite to give weight to his testimony, how is the advocate to act? He is not permitted to prove any circumstance affecting the character of the Witness by independent testimony. If he had twenty persons in Court, who could depose upon oath to as many acts of wickedness committed by the Witness, the advocate is not permitted by law to call them. What, then, is he to do? Is he to decline, from motives of false delicacy, or any baser motives, to put the character of the Witness to the test upon cross-examination? Such conduct would surely be unjustifiable in a moral point of view, as it is opposed to the practice of the English Bar.

The clear duty of the advocate is to act upon his instructions, to put such questions to the Witness as may tend to elicit his true character, and not, by a guilty silence, to permit him to stand up in the presence of a British Jury, with unblushing front, and to give his testimony without shame and without impeachment. It may be that upon the credit to be given to a single Witness the whole Case may turn. It may well happen that the Jury may be induced to decide the Case in one way or the other upon the credit of the very Witness with regard to whom the instructions of the advocate are replete with crimination.

The right of the Bar to enter into such an inquiry should be asserted with the utmost vigilance and intrepidity. The advocate ought never to shrink from it. The reputation, the liberty, the life of many a British subject, may depend upon the faithful performance of his duty in this particular. The prejudices of the unreflecting should have no effect in leading him to deviate for a moment from the straight but rugged path of fearless integrity. It may be added, that the opinions of some of the most learned Judges of modern times are recorded in support of this position.

"I will permit questions," said Mr. Justice LAWRENCE, in the case of *Harris* v. *Tippett*, 2 Camp., p. 637, "to be put to a Witness as to any improper conduct of which he may have been guilty, for the purpose of trying his credit." In an unreported case of *Frost* v. *Holloway*, which was tried at the sittings after Hilary Term, 1818, Lord ELLENBOROUGH compelled a Witness to answer whether he had not been confined for theft in gaol; and on the Witness appealing to the Court, "If you do not answer, I'll send you there." In the Case of *Cundell* v. *Pratt* (1 MOODY and MALKIN, 108), the Witness was asked on cross-examination whether she was not cohabiting in a state of incest with a particular individual. BEST, C. J., interfered to prohibit the question. It was urged by Serjeant SPANKIE that he had a right to put questions tending to degrade a Witness, for the purpose of trying his character.

BEST, C. J.: "I do not forbid the question on that ground. I, for one, will never go that length. Until I am told by the House of Lords that I am wrong, the rule that I shall always act upon is, to protect Witnesses from questions to which the answer may expose them to punishment. If they are protected beyond this, from questions that tend to degrade them, many an innocent man would unjustly suffer. *This question may subject her to punishment; I think, therefore, it ought not to be put.*" [This does not, of course, apply to the Cases of BELLEW or GOSFORD.]

"In the course of the QUEEN'S trial, Lord ERSKINE desired that a Witness might be recalled. The Earl of LIVERPOOL wished the noble and learned lord to state for what particular object—what precise question did he mean to put to the Witness?

"Lord ERSKINE replied, that he meant to ask whether he spent any part of any night, or the whole of any night, in the room of Madame DEMONT, when she was there in bed.

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* The *Carlisle Patiot* of May 30, 1873, says in reference to this: "There was one painful incident in the course of the day; Mr. GIBBES speaking of the marks on the Claimant's body, said, *there was one which he could not disclose.* Thereupon the Claimant rose from his seat pale as death, and evidently agitated to his utmost endurance," &c., &c., &c. But he made no communication to his Counsel of the particular thing which caused him this agitation.

†This is the gentleman whom it is supposed that Lord BELLEW tattooed; and it was their knowledge of this fact which made the Prosecution keep him out of the Witness-box. The following letter from Mr. SEGAR to the Defendant, shows we think that Mr. SEGAR was not present when TICHBORNE was tattooed as alleged, otherwise he would hardly have acknowledged Sir ROGER without seeing whether he was marked on the wrist.

16, Wickley-street, 4.30.

DEAR SIR,—On second thoughts it seems to me that you might as well, if not disagreeable to you, walk with me as far as our house (it is only a quarter of a hour's walk) and have tea with me. Mrs. SEGAR will be glad to see you and your friend, and I will take care you do not miss the 8.20 train.—Yours very truly,

THOS. FRAS. SEGAR.

Sir ROGER C. TICHBORNE.

See the *Introduction*, page 86, also page 174.

"The SOLICITOR-GENERAL (COPLEY) begged leave, with all respect, to say that that question could not be put. When Madame DEMONT was examined, it was impossible not to foresee that the object of his learned friends, in putting certain questions to the Witness, was either to insinuate or to prove that some person had slept with DEMONT. It was, he thought, a clear and undeniable point of law, that a Witness could not be asked if she had committed an immoral act, or, if asked such a question, compelled to give an answer if she objected to it. He stated it with the utmost possible submission to the noble and learned lord, for whose experience, knowledge, and talents he had a profound veneration. The only consideration, then, for their lordships would be, whether they would suffer that to be done circuitously, which could not be directly attempted without a violation of the forms of law.

"Lord ERSKINE said that he remained unconvinced that his question ought not to be put; for he thought, not only that the question he was putting to this Witness might have been put to Madame DEMONT, but also that she might have been legally asked whether he ever slept with her. It was a course which he himself had often pursued at the Bar; he had repeatedly asked a Witness questions which went to show his criminality. He was perfectly ready to admit that the Witness was not bound to answer. He remembered that once, before Lord ELLENBOROUGH, he had insisted upon putting such a question; it was objected to; and he tendered a bill of exceptions, which bill he was not under the necessity of arguing; it went to all the reason of the Judges, and received the assent of the most eminent men at the Bar, whom he had consulted on the occasion. He concluded by asserting that he had a right to have the Witness re-called, and asked if he was in DEMONT'S room on any night when she was in bed there.

"The Lord Chancellor said when he first came into Westminster Hall, which was between forty and fifty years ago, the constant practice of the Judges was, when a question of a criminatory nature was put to a Witness, to inform him that he was not bound to answer the question. *That practice was, he understood, of late years discontinued, and the more modern practice as the rule was laid down in the text books was, that a question of the nature he alluded to might be put to a Witness, though he was not compelled to answer unless he pleased.* This rule of law certainly put the Witness in this singular situation—that if he refuse to answer, an injurious suspicion is likely to attach to him; but it was clearly and positively laid down, that if a Witness has answered such a question, it is inadmissible to call proof either to contradict or discredit the answer. This was now, according to the text books, the clear and indisputable practice of the Courts in Westminster Hall."

From Stonyhurst we follow the Defendant to Dublin, and the first Witness who was called who saw ROGER TICHBORNE in Dublin was Lady CATHERINE WHEBLE, the sister of Lord St. LAWRENCE. Lady CATHERINE had seen him several times, chiefly at balls, but she is hardly able to say with certainty in what particular place she saw him. She said she had no doubt she had met him in society. She does not give us any account of ROGER TICHBORNE except that he was about the middle height, had a narrow chest, and a very thin face—all very vague. She would not like to say she had been in his company more than half-a-dozen times, but would think it probable. She does not remember the colour of his hair or his eyebrows; she does not remember his voice, but only the French accent. It is a very singular thing she should not remember the remarkable twitch, and my notion of it is, she did not take such notice of him as would have been advisable. She only saw him in the winter of 1849-50, and has, therefore, I submit, although a perfectly respectable and truthful lady, no distinct recollection about him. From this lady I go to her brother, Lord St. LAWRENCE. I do not comment upon him with reference to his evasions and equivocations, but upon the value of his evidence when he speaks as to identity. He gives us no recollections of ROGER TICHBORNE except that he was a slim slight man, and says nothing about the movement in his face. All he remembers is the French accent, and, therefore, we start with this: that this gentleman has no picture before his mind of what ROGER TICHBORNE was. He suggested things in conversation which never happened, and in consequence of the answers came to a rash and hasty conclusion that this was not the gentleman he had known. The next Witness was CHARLES GRANBY BURKE, who knew ROGER TICHBORNE in Dublin. His recollection was quite as slight and quite as vague as that of the other Witnesses. He said he was sallow and thin, and had dark brown hair. He cannot say that he looked particularly at his eyes or his nose, but should call the latter straight. The impression he had of him is one which is favourable to the Defendant. I may not be a very good judge of noses, but my notion of the Defendant's nose is that it is straight. You will bear in mind that ROGER TICHBORNE was an extremely thin and delicate young man, and I am not surprised to hear that he had a thin and delicate voice. It would be hardly fair of you to expect the same voice now. There is a lady who saw a good deal of him—Lady CLANRICARDE—and I have heard no explanation of the fact of her not having been called as a Witness.

Mr. TAYLOR (Juror): She is dead.

Dr. KENEALY: Is she dead? It has certainly escaped my recollection that her death was proved.

The LORD CHIEF JUSTICE: I think Mr. BURKE proved it. He was her grandnephew.

The FOREMAN: She has been dead many years.

Dr. KENEALY: Has that been proved?

Mr. Serjeant PARRY: One of the Jury happens to know it.

The LORD CHIEF JUSTICE: *The age of the present lord is sufficient to show that his mother must be dead.*

Dr. KENEALY: *If it was his mother.*

The LORD CHIEF JUSTICE: There is no doubt of that.

Dr. KENEALY: My lord, what I say is, that there is no evidence upon that point. There is one important matter which this gentleman mentions with regard to the size of his hands. He said that on one occasion, when he went to dine with him, he lent him his coat and gloves, which fitted him to a nicety. Mr. BURKE'S hands were small and nicely made, and it struck me as important that we should have had it that the gloves of Mr. BURKE fitted ROGER TICHBORNE.

Mr. Justice LUSH: I think Mr. BURKE said that Lady CLANRICARDE was 60 years of age in 1849.

Mr. TAYLOR (Juror): Her death is beyond all question.

The LORD CHIEF JUSTICE: There is a Marquis of CLANRICARDE now. It was an earldom before, and Lady CLANRICARDE was the widow of the late earl. *You can easily ascertain by the Peerage.*

Dr. KENEALY: Having disposed of those Witnesses I come to the military Witnesses, and I am sure you will not be likely to forget this fact, that they, like the Stonyhurst Witnesses, have been strongly—I won't say prejudiced—but have had a strong impression made on their minds by the ignorance of military matters which the Defendant has displayed in cross-examination. There is no doubt that those gentlemen would have acted more philosophically if they had made some allowance for ROGER TICHBORNE'S admitted ignorance of details in military matters. ROGER TICHBORNE was a man of defective memory and not very acute observation. The first Witness I will comment upon is Major KELLETT. He was not a Carabineer, but belonged to the Tipperary Artillery. He says he thinks that he has a perfect recollection of ROGER TICHBORNE. He thought he was not a very well-shaped fellow. He was not mentally calculated to make a good soldier. I should have thought that would have led this gentleman to make allowances for the Defendant's deficiencies when cross-examined on military matters in the Court of Common Pleas. I apply the same observation to all the military Witnesses for the Prosecution. Major KELLETT says that ROGER was then weak in the legs, and gives a description which is calculated to excite our commiseration. He says:—

"The way I observed his legs was in hunting dress. The tops of his boots were miles too big for his calves. He had not a very soldier-like mode of walking, but I do not remember his being in-kneed."

Major KELLETT produced a letter which contained a sentence that I say could never have been written by ARTHUR ORTON, namely, "I am writing at my Solicitor's office, and have no other paper." I suppose that he was writing on some draft paper. I ask you whether anyone in the position of ARTHUR ORTON would have thought of making such an apology as that. Major KELLETT details the practical jokes, which were played upon him at Cahir Barracks, and which I say would never have been perpetrated if he had been a man of any intelligence or moral force. I submit that Major KELLETT'S description shows that he had very little knowledge of ROGER TICHBORNE. I will here mention a letter written by the Defendant to Major KELLETT, of which no doubt Mr. HAWKINS will make a great deal. It is dated September 19th, 1867, and after some preliminary observations it says—

"We have now got all the necessary evidence, and we shall at once go to Trial. We have succeeded in finding two of the men saved with me, and that will put an end to the Case."

Mr. HAWKINS will probably say that this is a deliberate falsehood to deceive this gentleman; but I put it to you that this was the sanguine and real belief of a credulous man easily gullible, probably the result of two men being put on him by his adversaries; and there was no doubt a belief on the part of Mr. HOLMES also to the same effect. He is followed by Mrs. KELLETT, who knew ROGER TICHBORNE at Clonmel some time in 1851 or 1852. She describes him as being a little taller than the middle height, with an aquiline nose, and very thin face. According to one of those gentlemen, he had a nose a little turned up, but these things show how very unreliable is testimony of this kind. It is very strange that this lady did not notice the nervous affection in his face. Now, how it comes that so many of my Witnesses can prove this, while those of the Prosecution cannot, I am unable to explain. Whether the air of Ireland caused him to have it there in particular, or whether some persons noticed it and some did not, I cannot say. I am satisfied to take it that they did not notice it, or that the climate had some effect upon him. In the same way, it is probable that the peculiar climate of that wonderful land may have worked a change also in his nose: and converted it into a *nez retroussé*, from having been finely aquiline. (Laughter.) You think I am not serious, Gentlemen: that I speak ironically. But can anyone be serious, when such things come before him?

There is a legend of the Roman Catholic Church, which, as we are upon Stonyhurst, one of its cradles and strongholds in this nation, seems to me to come in not inappropriately here. It

happened once in Padua, says the chronicler, that a Minorite friar was appointed to preach the Lent sermons in the Cathedral of St. Anthony. The subject of his discourse was the Pains of Hell. One day however, when in the pulpit, he found himself indisposed, and obliged to discontinue; but he promised the congregation to resume the discourse on the following morning. The morning came and found the friar so much worse that the physicians of the convent forbade him to leave his bed; and the invalid sent for the brethren and begged that some of them would take his place in the pulpit and resume the interrupted discourse; but they each and all excused themselves, alleging the want of time for due preparation. Our sick friar fretted exceedingly at the idea of disappointing the congregation, and was beginning to grow feverish from vexation, when one of the Minorites on recollection observed that a foreign brother, from France, had arrived at the convent the night before, on his way to the shrine of Our Lady of Loretto, and that he had the appearance of an intellectual man; he was tall, had black eyes and beard, and high black eyebrows; doubtless *he* would be able to preach extempore. The invalid sent for the stranger, told him his dilemma and requested his good offices. After some hesitation the foreign friar consented; went to the Cathedral, ascended the pulpit and preached on the given subject, the Pains of Hell. Never before had such a sermon been heard in Padua. He showed forth, in the most glowing colours, the enormity of sin and the danger of trampling under foot the holy commandments; but especially in describing the miseries of hell he spoke with such a fiery and overpowering eloquence that he seemed to set before the eyes of the astonished and terrified people not so much a vivid picture as an awful reality. They felt their hearts pierced as with a sword by his intense earnestness, and could not refrain from weeping and sobbing aloud, making mentally a thousand vows of reformation and newness of life. When the preacher descended from the pulpit, the people retired in tears, and the Minorite brethren expressed their warmest thanks to the stranger for the manner in which he had exerted his extraordinary talents, and expressed their delight at the great benefit the hearers had evidently received. Then as he was taking leave of the brotherhood to proceed on his pilgrimage, they attended him to the convent gate. But as they walked on, an aged and devout friar, who was often inspired to see things beyond the ordinary ken of mortals, espied a cloven foot under the monastic garb of the stranger, and discovered that it was no Minorite brother, but an incarnate fiend of hell. The old man summoned his courage, and adjured him in the name of the Creator to confess was he not a devil? and why he had so unworthily taken that holy habit and come to preach the way of salvation which he could never attain, and from which it had been his aim to turn mankind? The fiend confessed that he was in truth a devil, and the expression of his face became hideous to look on, and his eyes blazed flames of light; he said that his desire for the perdition of man was as great as ever, and that the sermon he had preached that day would be so far from turning the people to salvation, that on the contrary, it would tend to their condemnation, for he had preached to them awful truths, and they had owned the force of them by their tears and penitence. But those tears were dried at the church door, and their penitence lasted only till they reached home, amid their pleasures, and their so soon stifled conviction was but an increase of sin. "At the last day," he continued, "I myself will appear as a Witness against these people, and will say to the Judge upon the throne, O Thou Mighty One! behold these men! how can they accuse *me* of tempting them to sin? I who have so forcibly described the agonies of hell; and who knows them as I do, or can paint them as well? Have they not owned this, and then dried their tears and forgot to repent? how shall they justify their sins by accusing me as their tempter?" Thus saying, he vanished from sight, leaving them mute with terror. The devout old friar was the first to speak. "Woe," he said, "woe to those men who will not be persuaded to heaven by the mild and gracious invitation of their God, nor scared from hell by the solemn warnings with which Satan himself admonishes them!"

Gentlemen, what moral do I deduce from this? That for nearly all his present mishaps and for the numerous misconstructions of his conduct, he has only his own recklessness to blame. He was warned in Australia—he may have learned at New York, that the most determined resistance would be offered to his claims. He found out, the moment he arrived in England, that this resistance threatened to be of the most serious kind. Does it teach him sense? caution? even common care of his own interests, and those of others who were dependent upon him? Nothing of the sort. From first to last, there has been nothing but wild recklessness: and I can fancy the Fiend, with arch mock, crying out in his ears: "Though you were warned, it was in vain; and if you are now undone, thank yourself, who rushed into perils, and became the servant of follies after all the warnings that you received."

I say this, Gentlemen, not to set you against my Client: but rather to excite sympathy and compassion for a fellow-man, who, with every inducement to be strong in his conduct, has been in many instances, weak, feeble, and flexible as a reed.

[The Court adjourned at four o'clock. The customary crowd assembled to witness the departure of the Defendant.]

ONE HUNDRED AND FIFTIETH DAY.—FRIDAY, JANUARY 2ND, 1874. *

Dr. KENEALY resumed his address to the Jury. He said: May it please your Lordship and Gentlemen of the Jury—I forgot to point your attention yesterday to two things mentioned in the evidence of Major KELLETT on the subject of a roach-backed or a hollow-backed horse.

The LORD CHIEF JUSTICE: Is not a roach-backed horse very different from a hollow-backed horse? The one is concave, the other is convex. Roach-backed is suggested by the shape of a roach. However, either will do for the purpose of your present argument.

Dr. KENEALY: On that matter the Defendant was asked in the Common Pleas about the horse, and he said the horse was hollow-backed. The Defendant has just drawn for me what he means by a roach-backed horse. There is a hollow in the back, and a protuberance towards the tail. Perhaps they mean the same thing.

Mr. TAYLOR (Juror): Quite the reverse. The hollow is in the back here in this sketch. That is not a roach-backed horse.

The LORD CHIEF JUSTICE: There is a protuberance, as there must be beyond the hollow. However, perhaps Major KELLETT and the Defendant had at the time a different notion as to what a roach-backed horse is.

Dr. KENEALY: At all events, we have the Defendant's idea of it in this sketch.

The LORD CHIEF JUSTICE: *I have it before me; but I do not know which is the head and which is the tail.* (Laughter.)

Dr. KENEALY: The smaller part is towards the head—the protuberance towards the tail.

The LORD CHIEF JUSTICE: Yes; that fairly represents it.

Dr. KENEALY: Then the Defendant was right, Gentlemen.

The JUROR: I did not say he was. I said you were wrong when you stated that a roach-backed horse and a hollow-backed horse were one and the same thing.

The LORD CHIEF JUSTICE: In a roach-backed horse the protuberance is more in the centre than it is here.

The JUROR: That is so, my lord. Old horses very often become roach-backed.

Dr. KENEALY: Whatever it may be called, the Defendant accurately described the horse about which he was asked. There is another thing which nobody but one who had met Captain SANKEY could have known. The Captain, remember, did not belong to the regiment, but he frequently, said the Defendant, dined at the mess, and Major KELLETT corroborated that statement. No examination of Horse Guards papers could have given him that information. It must have been the result of recollection. The next Witness to whom I wish to call attention is Captain MANDERS, and he appeared to have some prejudice against the Defendant, as he said that he originally did not think the Defendant was the man because he did not come to see him. Very little matters, you know, Gentlemen, often produce feelings of prejudice involuntarily in the mind. I do not say that this apparent slight coloured the evidence of the Witness, but it certainly produced in his mind a feeling against the Defendant, or one, at all events, unfavourable to him. He described ROGER as having straight hair and a sallow complexion, and these, I contend, the Defendant has. He walked, he said, like a weak, delicate man. There are various things in his minute description of ROGER which tally with the actual man before

* TICHBORNE'S SEALED PACKET TO DR. KENEALY.

On Saturday, the 3rd of January, 1874, there was delivered to me a framed print containing photographic copies of some of the principal characters in the TICHBORNE Trial—the Judges, the Counsel, the Solicitors, &c. This came from the Claimant. I did not pay any particular attention to it, but laid it aside as a TICHBORNE Relique and memorial—indicating courtesy and attention. Some days, however, after his conviction, a letter from an unknown correspondent reached me, to the effect that in this

you. He mentions, for instance, one of those peculiarities which do not alter—namely, the twitching of the eyebrow, which you must have all observed in the Defendant. Captain MANDERS remembered it distinctly, and said so in reply to the Lord Chief Justice—a twitching of the muscles of the eye—particularly of the skin over the left eye. He must have been mistaken in saying that it was confined to one eye—as I can hardly conceive a nervous movement of one eye only. It is a matter common to ROGER TICHBORNE and to the Defendant, and it is a most important fact for you to consider in coming to a conclusion upon the question of the Defendant's identity. The Witness said ROGER was a narrow-chested man with sloping shoulder, and he added

frame there might possibly be found a writing which TICHBORNE was suspected of depositing there; but of what purport the sender of the letter did not know: nor, indeed, was there anything stronger on the subject than mere suspicion; as TICHBORNE, when framing the photographs, had turned everybody out of the room; and had excited curiosity by his manner only, and not by anything that he either said or did. The missive, of course, excited some inquisitiveness. The frame was opened, and nothing appeared; and search was almost discontinued in despair. At length, on further examination, and in a corner which almost defied detection, between the brown paper cover on the back and the thin board which held in the plate, the following fragment, in TICHBORNE'S writing, appeared:—

"34, Bessborough-street, S.W.

"Framed by R. C. D. TICHBORNE for Dr. KENEALY, Q.C., LL.D., January 2nd, 1874.

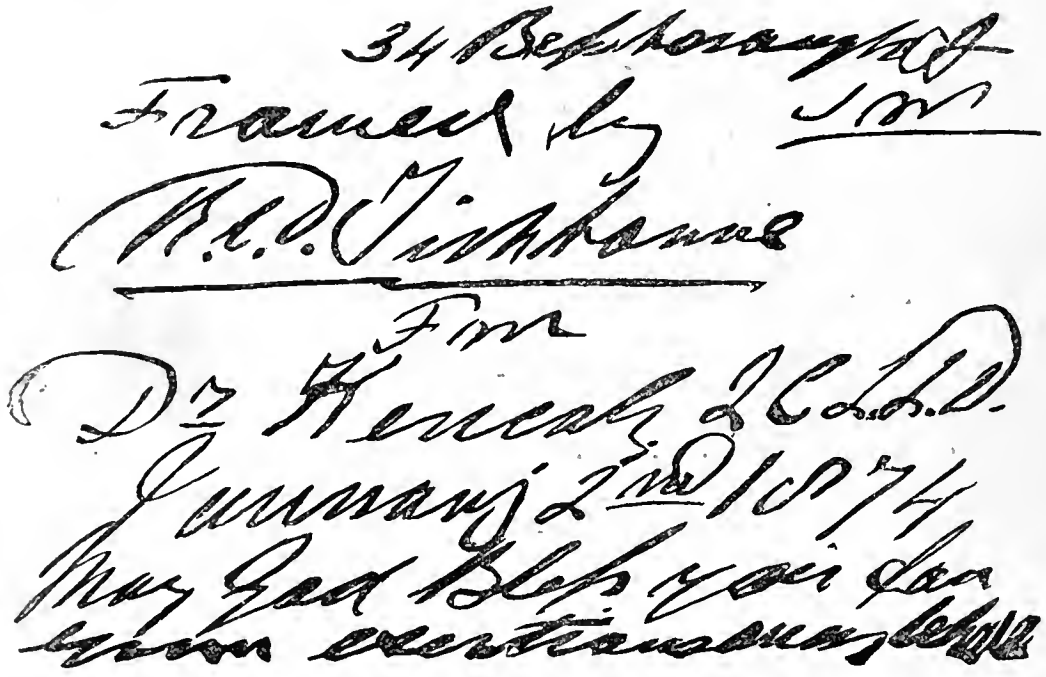
"May GOD bless you for your exertions on my behalf." *

It was impossible, on reading these lines, not to feel sorrow for the Man who had exhibited a faith and trust in me as great as any that Client ever gave to Counsel; and who had resorted to so singular a mode of conveying feelings that he never openly expressed, but appears to have sincerely entertained. The eccentric manner in which he thus conveyed a record of his real feelings, was in harmony with much that TICHBORNE did: and accords well with Mr. WHALLEY'S view of him, which though evidently penned under the spell of feeling, perhaps not inaccurately describes the mental characteristics of the Defendant.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—To those who continue to give attention to the TICHBORNE Case it must more and more become manifest that some overpowering, though secret, influence has, from the first, been in active operation, for the express purpose of preventing full inquiry, and especially public discussion; and it is a happy feature in the Case that the intense virulence which always marks Priestly policy should to some extent tend to defeat their object. The Prosecution which has so impudently been directed against yourself, though possibly it may succeed, either by the willing co-operation of your brethren of the bar, or in the more fatal breakdown of your health and strength, will verily, like the blood of Martyrs, be the seeds of Justice and Retribution; and each of us who have been prominent in this Cause may, in some lesser degree, contribute, by the harassment to which we are inevitably exposed, to keep alive public curiosity; and nothing is wanted to secure by one means or other the early exposure of this most astounding conspiracy against law and justice yet attempted by the Jesuits in this country, than the continuance of your paper, and the free discussion therein of the facts and circumstances that will from day to day crop up from this fertile field of injustice and wrong.

The recent trial at law, in which Mr. EAST, the landlord of



* FACSIMILE OF SIR ROGER TICHBORNE'S HANDWRITING.

the 'Queen's Hotel,' obtained a verdict against myself for £100, is an incident that deserves some further notice. The jury desired to give a verdict in my favour, as may be inferred from the observation addressed to the judge, when he thought fit to take the case into his own hands and decide upon both law and fact, viz.: "Is the law so very strict?" said one of the jury, the foreman, I believe; and it is worthy of notice that in none of the morning papers, in giving a report of the Trial, is this observation recorded—a further instance of the complete prostration of the press under the influences which preside and watch over this TICHBORNE case.

When Judges take upon themselves to decide upon the *facts* of any case, under the plea that it is nothing but a question of law (often attempted in political Trials of former days), it is but another development of the new law of Contempt of Court, and is perhaps a mode of setting aside the "Trials by Jury," more difficult of detection and remedy than the contempt of court proceedings of the Lord Chief Justice may yet be found to be. If practicable, it is my intention to test the legality of Mr. Justice QUAIN'S ruling in this instance by an application for a new trial.

The important fact disclosed by the evidence on this Trial was the eccentricity of conduct exhibited by the Claimant in relation to those who made such efforts on his behalf, and generally in respect of his defects, as stated by me, in one of my letters to Mr. EAST: and this peculiarity constitutes a conclusive explanation of many of the features of his defects most adverse to his cause.

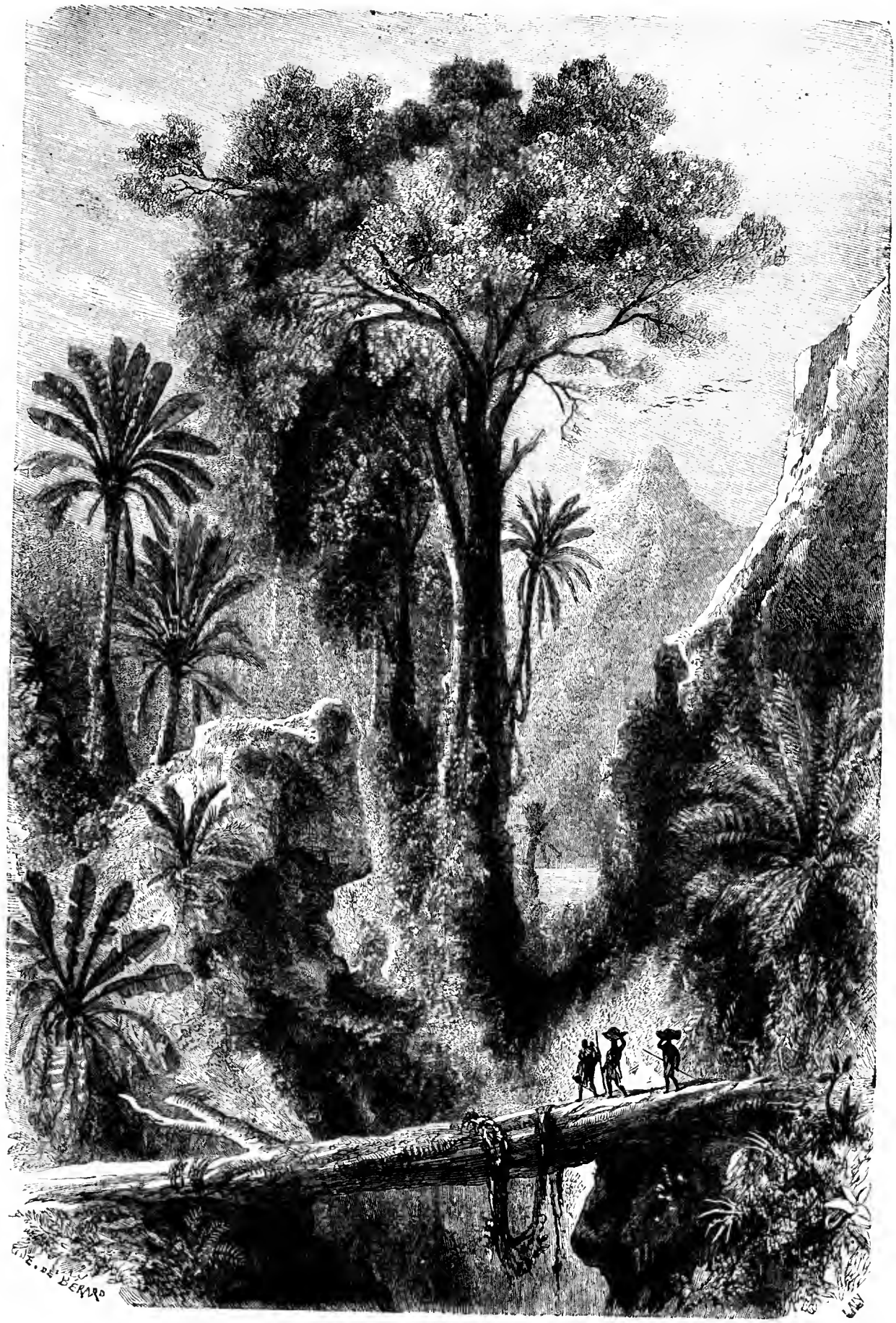
To those who were in personal intercourse with him it was obvious that in very many respects he was no more responsible for his actions and conduct than any recognised lunatic, and we were one and all convinced that sunstroke from which, according to LUIE'S *account, he never recovered during his voyage in the 'Osprey,' was the true explanation of his eccentricities, from the day he hired himself to* FOSTER *as a Horsebreaker to that on which he received his sentence.*

If any one should ask, Why support a man such as your own letters show you believe him to be? is it not enough to point out that in addition to all other afflictions and trials he was manifestly the victim of those mental maladies which so frequently follow from sunstroke? and did such involuntary affliction render him less deserving of support, if on other grounds he was known to us to be—and every day that has passed has tended to confirm the fact—the victim of as wide-spread a conspiracy as ever sent an innocent man to prison? or, if it should be ultimately successful, that ever sapped the foundation of public faith in the administration of justice? It is right that I should give this explanation of my letter as read in the proceedings of this Trial, as well on behalf of the unhappy man who now languishes to death—an innocent man in an English prison—as also to justify the efforts which I am not less than at any former time prepared and resolved to make, to remove this grievous scandal; and while living on in the hope of rescuing the wretched man himself from his dungeon, to vindicate to the full extent the Majesty and Purity of British Justice.—I am your obedient servant.

G. H. WHALLEY.

Plas Madoc, 20th June, 1874.

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 52.—MOUNTAIN GORGE, ARICA, SOUTH AMERICA.

that his epaulettes used in consequence to hang down; but that, too, must be a mistake, as a military tailor would so sew them on as to prevent them hanging down—the object of wearing them being to make the shoulders look square. Notwithstanding the similarity presented by those appearances, Captain MANDERS still had some doubts as to whether the Defendant was his old brother officer, but he used a very suggestive phrase in speaking of the Defendant's voice. "I tried to argue against myself in hearing him speak that the voice was the voice of ROGER TICHBORNE, but I could not do so." What is the meaning of that? Does it not show prepossession against the Defendant? Does it not show that he had a lingering idea that the Defendant was the man; a sort of conviction that he was, but that for some cause or other he argued against himself on the subject? He struggled and fought hard against the growing conviction, or at all events impression, that the Defendant was ROGER TICHBORNE. It is clear that his personal appearance did not present any insurmountable difficulty to the recognition of the Defendant by Captain MANDERS. He did not finally make up his mind till he saw him, he says, in 1871, but then, remember, he saw him under a cloud of difficulty—under circumstances the most unfavourable to identity—after all the years that had elapsed and all the hardships through which the Defendant had passed. Captain MANDERS says he never saw ROGER drunk, but it should be borne in mind that the Witness said he rarely dined at mess, and he spoke of ROGER giving the wrong word of command at the commonest every-day drill—just the thing a man would do whose brain had been injured by excessive indulgence in spirits and tobacco. This Witness spoke of the melancholy which gradually became apparent in the countenance of ROGER TICHBORNE. He became, he said, more and more melancholy when he found that his arrangements as to proceeding to India had been interfered with. The prevailing characteristic of this Defendant's face is a melancholy of the most expressive nature. The next Witness was Mrs. MANDERS. She first saw the Defendant in January, 1851, again at Cahir in 1852, and subsequently at Canterbury. From her description she appears to have taken very little notice of him, and you can scarcely place much stress on that part of her evidence. Yet having seen the Defendant after a lapse of twenty years, and under the unfavourable circumstances in which her husband saw him, she came to the conclusion that the Defendant was not ROGER TICHBORNE. Her answers on cross-examination show that she has a very indistinct recollection of ROGER. The Defendant's eyes, she says, are not at all like ROGER'S, but a number of Witnesses have deposed that ROGER'S eyes were, as the Defendant's are, bluish grey. Then she said that the Defendant's hair was lighter than it was in 1871. Did she mean to convey by that answer that the Defendant had resorted to dyeing his hair? Had she heard such a suggestion from any one? If so, the imputation is shown to be utterly groundless by the evidence of Mr. HODSON and Mr. ATTWELL. She stated that she recollected ROGER by his remarkably pleasant smile, and nice expression of face, and I say that the characteristic still remains. You must have observed that when not wearing the prevailing pensive and melancholy expression, the Defendant wears as pleasant a smile as ever flitted over the human face. The next Witness to whom I shall call your attention is Major FRASER. I have already dwelt on the incident of the snuff-box, and I again contend that it is the most extraordinary and conclusive proof that the Defendant is the Carabineer officer, ROGER TICHBORNE. "If you can tell me about the snuff-box," said Major FRASER to the Defendant, "I will try and believe you are TICHBORNE;" showing clearly that there was nothing in his voice, appearance, or conduct which suggested a doubt. I say that the Defendant did answer the question correctly, and that Major FRASER and the Defendant, alone of all the world knowing of the incident, he ought at once to have acknowledged the Defendant as his old brother officer. If there were any dissimilarity between the Defendant and ROGER it would have been wholly unnecessary to have put that test. Major FRASER would at once have said, "What nonsense! You ROGER TICHBORNE! You are no more TICHBORNE than you are FRASER." But he saw nothing to create a doubt, and therefore he put the test to remove any doubt that might have existed in his mind before he saw the Defendant. Why did not Major FRASER acknowledge him? Because in his answer he mistook silver for wood, but that mistake—as I have already said, and given you my reasons for it—I look upon as contemptible and unworthy of your notice. I contend that he solved the question conclusively, and that ought to have remained in the mind of Major FRASER as to his identity. He admitted that ROGER had arched eyebrows and large eyes—just as the Defendant has. What, then, becomes of the accuracy of the Chilian daguerreotype in which the eyebrows are straight?

The LORD CHIEF JUSTICE: Which are we to rely on, the daguerreotype or the evidence?

Dr. KENEALY: TICHBORNE was so much in the habit of elevating his eyebrows that they assumed different forms at different times. I do not know how the straight eyebrows got into the daguerreotype.

The LORD CHIEF JUSTICE: Surely it must be a correct representation of ROGER at the moment he was taken.

Dr. KENEALY: If he were twitching at the time there would be a blur which would represent a straight dark line.

The LORD CHIEF JUSTICE: *Do you suggest that it has been fraudulently altered?*

Dr. KENEALY: My lord, I am not called upon to make any suggestion of fraud, though your lordship is perpetually challenging me to do so; but I may ask—as you invite me—why they may not alter a daguerreotype as well as the negative of a photograph? These artists are very skilful. We see a wrinkled face converted into a smooth face, and 70 years made to look like 21.

The LORD CHIEF JUSTICE: I can quite understand a photographer making a likeness lighter or darker.

Dr. KENEALY: These things are carried into the dark and the sitter goes away. The artist alters the likeness according to his recollection.

Mr. TAYLOR (Juror): A daguerreotype could not be exposed to the light or air or interfered with.

Mr. Justice LUSH: It would show on the surface whether it had been tampered with.

Dr. KENEALY: The daguerreotype, I say, must be wrong, as the whole body of the evidence shows that ROGER had arched eyebrows such as the Defendant has.

The LORD CHIEF JUSTICE: It is, of course, a question for the Jury whether they will adopt the daguerreotype or the evidence.

Dr. KENEALY: It was taken in the infancy of the art, and in a foreign country. The evidence of Major FRASER is distinctly to the effect that ROGER had arched eyebrows. Even the Family do not say they were straight.

The LORD CHIEF JUSTICE: True. In my opinion the eyebrows in the daguerreotype are between straight and arched.

Dr. KENEALY: What I wanted, my lord, was to get rid of the impression on the mind of one of the Jurors, who said, "There can be no mistake that this person in the daguerreotype had straight eyebrows." I hope your lordship's observation will weaken that impression if it still exists. Again, Gentlemen, Major FRASER frankly admitted that he fancied he saw a slight resemblance to ROGER in the Defendant in that part of his face from the chin to the ear. That, I submit, is an indelible feature which age could not give, and which disease or exposure could not take away—one which proves that the Defendant is ROGER TICHBORNE. Can you for a moment imagine ARTHUR ORTON bearing any resemblance to ROGER TICHBORNE? Well, but it is said that the Defendant did not remember the mess-waiter, JOHN IRVING, who had been in the regiment a quarter of a century. Does not that fact dispose of the imputation that he was coached up by CARTER and M'CANN? Why, one of the first things they would have put into his mind would have reference to this man IRVING, who was in the same class of life as themselves. They would say, "Whatever you forget, do not forget IRVING the mess-waiter." But he could not recollect him. He had wholly passed out of his recollection.

And here before I quit Major FRASER, I hope for ever, let me make a final observation upon his evidence, and upon the snuff-box. One single material circumstance, which could have been known only to the undoubted ROGER TICHBORNE, like this of the snuff-box ought to outweigh a host of trivial testimony, such as here has been too frequently presented. Observe upon what texts ancient Judges arrived at truth. SEUTORIUS in his life of the Emperor CLAUDIAN states, that that monarch discovered a woman to be the real mother of a young man whom she refused to acknowledge, by commanding her to marry him—for rather than commit incest she confessed the truth. DIODORUS SICULUS also speaks of a King of Thrace, who discovered which of three Claimants was the son of a deceased King of the Commerians, by ordering each of them to shoot an arrow into the dead body. Two obeyed without hesitation: but the third, who was the real son, refused. Thus you see in these cases how a single circumstance conduced to proof of the matter in issue. The decision of King SOLOMON, as to which of the two harlots was the mother of the living child, rested on the general presumption in favour of maternal love: and as the single fact that the "bowels" of the real mother "yearned upon her son," and she would in no wise consent to his being slain, so—to pass from history to fiction—the famous judgment of SANCHO PANZA, acquitting the herdsman charged with rape, was founded on the ascertained fact that the Prosecutrix successfully resisted the attempt to take her purse which the accused made by order of the Court. "Sister of mine," said honest SANCHO to the damsel, "had you shewn the same, or but half as much courage and resolution in defending your chastity as you have shewn in defending your money, the strength of HERCULES could not have violated you." (Laughter.)

Gentlemen, I pass from FRAZER. Captain MORTON, the next Witness, was not in the Carabineers, and he did not recollect a single unalterable feature of ROGER TICHBORNE. I do not think you will consider his evidence worth the paper on which the language was conveyed. This is the Witness who spoke of the roach-backed horse which had belonged to him, being first in the regiment in 1852, but Captain SANKEY was positive that the horse was in the regiment in Ireland at the time the Defendant said it was, and that the diagram he drew in the Common Pleas correctly represented the back of the charger. (Dr. KENEALY then read the evidence of Captain SANKEY on the subject.) Captain MORTON was evidently speaking of another horse altogether, and not of the horse with respect to which Captain SANKEY questioned the Defendant as a test of his identity.

The LORD CHIEF JUSTICE: If the horse was bought after Christmas, 1852, ROGER might have seen it at Canterbury. I make that observation in your favour.

DR. KENEALY: ROGER was only at Canterbury for a short time after Christmas, 1852. It was at Clonmel he saw the horse.

The LORD CHIEF JUSTICE: He was at Canterbury from the 31st of December, 1852, until the 25th or 26th of January, 1853, when he returned to Paris.

Dr. KENEALY: Gentlemen, the next Witness we have is Colonel BICKERSTAFFE, and he does not mention one single feature of ROGER that is inconsistent with the features of the Defendant. He had sloping shoulders; so has the Defendant. To be sure, he talks of a pigeon breast, but the mass of evidence on that subject shows that the Witness must have been mistaken in that respect. ROGER, he said, used to plaister down his hair—of course with oil—so that is no new or recent accomplishment. ROGER used, he added, to kick out his sabretache as he walked along, a habit which shows a walk identical with that of the Defendant. The Colonel said that ROGER had not a twitch of the eye; but no one ever said he had; a twitch of the eye being an impossibility, although it was constantly put either from ignorance or design to the Witnesses. That he used to lift his eyebrows as if with surprise, the Colonel remembered; and a habit of that kind once contracted grows upon a person, and it would gradually increase and continue. It is now so constant a habit of the Defendant that he cannot resist it, and it exists in the places where the Witness noticed it—namely, in the eyebrows. ROGER, he said, suffered a good deal from asthma, and it gave a wrinkled look to his face—probably referring to the pensive, melancholy appearance which is evidenced by the Chilian daguerreotype, and is still present in the expression of the Defendant's face. If ROGER had asthma, he was cured of it in South America, and the alterations in his appearance have been produced by improved health, by habit, and by age. Colonel BICKERSTAFFE confirmed what other Witnesses stated, that when ROGER was put on a horse he knew nothing about it.

The LORD CHIEF JUSTICE: About his drill—not about the horse.

Dr. KENEALY: Oh, of course he knew something about a horse. He was not a good military rider, but he could hunt. The Colonel said, "I could not teach him to give the word of commond"—probably arising from his original want of knowledge of English, or to the shame produced by seeing the men laughing at the French pronunciation. It may have been that, owing to defect of memory, he was unable to remember the word of command.

The FOREMAN: The Colonel said he was unable to express himself distinctly.

Dr. KENEALY: His half barbaric accent made the men laugh, and that may have affected his memory at the moment. We know that Colonel BICKERSTAFFE says that in his room he knew his drill in theory. Colonel BICKERSTAFFE then goes on to speak of ROGER having a fit, but I shall have occasion to address you on that subject later on, when I come to the testimony of the medical gentlemen.

Mr. TAYLOR (Juror): Colonel BICKERSTAFFE swore most positively to the fit and the circumstances attending it.

Dr. KENEALY: Yes, and no doubt he thinks he is clear with regard to it; but from the lapse of time which has taken place all distinct recollection of the matter may have been lost. I will point out some circumstances which may have prevented Colonel BICKERSTAFFE from having such a clear recollection as he otherwise might have had. This fit took place in the autumn—some time in September, I think—at about half-past seven or eight o'clock in the evening. At such a time as that the light must have been imperfect, and candles must have been necessary, but it is not stated in the evidence that there were any, so that the operation was performed in the twilight.

The LORD CHIEF JUSTICE: Is there any evidence that there were no candles?

Dr. KENEALY: It has not been proved.

The LORD CHIEF JUSTICE: Mrs. MANDERS says he called on her on the 9th August, and she says that was after he had had his fit.

Dr. KENEALY; He had had a fit before the one spoken to by Colonel BICKERSTAFFE.

The LORD CHIEF JUSTICE: That did not last long, and it led to no illness.

Dr. KENEALY: Mrs. MANDERS may not have remembered the fit ROGER TICHBORNE had at Canterbury, and which Colonel BICKERSTAFFE refers to.

The LORD CHIEF JUSTICE: Do you say there were no candles in the room? Do you suppose a doctor would bleed a man in the dark?

Dr. KENEALY: There were no candles spoken to by the Witness, and it is not pretended that there were any. If your lordship fixes the date in August, it is clear that Colonel BICKERSTAFFE's recollection is very imperfect.

The FOREMAN: General JONES fixed it in the summer.

Dr. KENEALY: With regard to the doctor bleeding him in the dark, the man was called upon in an emergency. He was a queer sort of surgeon, as I shall show you. Colonel BICKERSTAFFE says ROGER's face was livid, and he was gasping for breath.

The LORD CHIEF JUSTICE: But queer or otherwise, no surgeon would bleed a man in the dark.

Dr. KENEALY: There is no telling what army surgeons will do.

The LORD CHIEF JUSTICE: How could he tell his face was livid if they were in the dark?

Dr. KENEALY: I don't know, my lord.

The LORD CHIEF JUSTICE: You don't suppose they would perform an operation on a sick man, who was so bad that he was expected to die, in the dark?

Dr. KENEALY: I have no right to assume that there were any candles in the room. There is no proof of it. One of the Jurors yesterday quoted a good maxim of law, namely, "That of which there is no proof must be taken as not existing."

The LORD CHIEF JUSTICE: That maxim does not relieve us from the necessity of using our common sense.

Mr. Justice LUSH: Colonel BICKERSTAFFE said, "I sat up with him (ROGER) all night." Do you suppose, Dr. KENEALY, that he did that without a light?

Dr. KENEALY: I find no evidence of light; and that may have referred to a later hour. Even if there were the autumnal light, the invalid, in his dangerous state, would probably be kept in darkness. I am speaking of the absence of candle light in an August twilight when the fit came on. Candles may have been used after. But why should we assume anything in a Criminal Case, which is not proven? If I ever assume anything, I am at once asked, "*Was that proved?*"

The LORD CHIEF JUSTICE: I do not think you will be able to persuade *any one who has any common sense that the operation was performed in the dark.*

Dr. KENEALY: If we always acted in this world under the influence of common sense, everything would go on well; but, unfortunately, we do not. What does this doctor do? Why, he shows that he has lost his wits. After examining the patient, he turned to the Witness, and asked him whether he should open the temporal artery. Does not this—putting such a question to a layman—show that he was a queer sort of doctor?

Mr. TAYLOR (Juror): There must have been light, for he saw the tattoo marks.

Dr. KENEALY: That is the very reason I am dwelling on the point; and arguing that he was not in a position to see distinctly what he has spoken to.

The LORD CHIEF JUSTICE: It is too much to ask us to believe that they could see his face livid, his gasping for breath, the veins in his arms, and the temporal artery, and all in the dark.

Dr. KENEALY: My lord, we are asked to believe a good deal by the Prosecution.

The LORD CHIEF JUSTICE: I think not.

Dr. KENEALY: It may seem absurd, but I have a right to assume that they had no light. Why is everything assumed against my Client?

Mr. TAYLOR (Juror): You are not throwing much light on it. (A laugh.)

The LORD CHIEF JUSTICE: If Mr. HAWKINS had asked, Had they candles? I should have said, "Pray do not waste time by asking such idle questions."

Mr. HAWKINS: Your lordship will find the question before was "Did you see his face?" and the reply is, "I did; it was a livid colour."

The LORD CHIEF JUSTICE: We must assume that there were lights.

Dr. KENEALY: If you are going to assume everything in favour of the Prosecution——

The LORD CHIEF JUSTICE: We do no such thing, but we must have regard to the common-sense view.

Dr. KENEALY: Unfortunately, Gentlemen, a common-sense view does not always prevail.

The LORD CHIEF JUSTICE: No, I see that. (Great laughter.)

Dr. KENEALY: Gentlemen, I take no notice of that observation. I leave it to history.

The LORD CHIEF JUSTICE: Very well. (Renewed laughter.)

Dr. KENEALY: With reference to the tattoo marks, I point your attention to the way in which BICKERSTAFFE says that he saw them, though I would rather myself treat this matter of tattoo as I think it deserves. He says they were on ROGER'S left arm. He was lying on his back, with his arm close to the wall, and it was in the dusk of the evening. If there had been candles, I may remark in passing, he would not have mentioned the dusk. The arm was close up to the wall, he says. Then how could the doctor bleed him there? Are we to believe that the doctor stooped over the bed to get at the arm? That is absurd and you have only to call your mind to it to see that it is nonsense. That Colonel BICKERSTAFFE is giving us as accurate a description as he thinks I don't dispute, but I leave it to your common sense, to which my lord so frequently and so emphatically refers, and I ask you is what he says likely to have been what took place? It is not pretended by this Witness that he was the person who held the cup for the blood. If he had been, he might have been able to see how the operation was performed; but there was an hospital assistant present, and he held the pannikin. Where then did Colonel BICKERSTAFFE stand that he could see so much in spite of the doctor and the hospital assistant leaning over the bed to get at the left arm? The story must have been a sort of "hodge-podge" that Colonel BICKERSTAFFE heard somewhere or other, or it may be that he saw something of it himself, but has only an indistinct recollection of it, and cannot be accurate in his description. General JONES is the next Witness I call your attention to. He says ROGER TICHBORNE had stooping shoulders

and twitching eyebrows, and both these are characteristics possessed by the Defendant. If the Counsel for the Prosecution had questioned the other Witnesses on these matters, no doubt he would have had similar honest answers. General JONES said the Defendant did not recognise him at the Law Institution. How was it CARTER and M'CANN did not teach him to recognise a man of such remarkable appearance as General JONES, if they coached him as it is said they did? They did not prime him, as is evident, and I say that the Defendant's pride would not let him recognise the people whom he believed to be banded together to injure him. As a proof of this feeling of pride, take the letter written by the Defendant to General JONES, in which he speaks of his (General JONES) having gone about to different people abusing him (Defendant), and speaks his mind with reference to such a proceeding very plainly. This Witness speaks of an illness of ROGER TICHBORNE'S, which is probably that which Mrs. MANDERS speaks to, and which the Lord Chief Justice has been confounding, as I say, with the fit at Canterbury. The Witness says it took place in June or July, and was a serious illness, although it lasted only a short time; but it was no doubt a different one from that spoken to by Colonel BICKERSTAFFE. It is perfectly marvellous to me how these Witnesses come one after the other, and tell us nothing of the personal appearance of ROGER TICHBORNE. The next Witness is Colonel BETTY, who says that ROGER TICHBORNE, when he knew him, was 5ft. 8in. in height, thin, with a sallow complexion, and straight brown hair. This Witness, although he speaks to the non-identity of the Defendant with ROGER TICHBORNE, never spoke to the latter.

Mr. HAWKINS: The question, "Did you mix in society and talk to him?" was put to this Witness by the Prosecution, and he answered, "Yes."

Dr. KENEALY: I should like to have heard something about that conversation. The question "Did you mix in society?" seems so ambiguous that I will make Mr. HAWKINS a present of it and the answer. Then Colonel BOTT says, "ROGER was a man of about 5ft. 8in., slim, pigeon-breasted, with dark hair perfectly straight, and light blue or grey eyes. He walked with short, quick steps, and there was nothing peculiar about his legs." He does not tell us anything about his walk, and I submit that his inability to do this shows that he knew or remembered very little about him, as the peculiarity in the walk was one of his most striking characteristics. These two persons, BOTT and BETTY, who seem to be always sailing about in company, went to Croydon, I submit, for a lark—merely to amuse themselves—and their evidence cannot be considered as of any value.

Mr. TAYLOR (Juror): Did they not go to Croydon by invitation?

The LORD CHIEF JUSTICE: Yes.

Dr. KENEALY: As if the invitation could not have suggested the notion of a lark! Mr. MCMAHON calls my attention to the fact that BOTT said, "ROGER lived separate from the mess. He lived down in a house by the guard-room, and we did not like it." I don't wonder that the poor fellow separated himself from the mess. If they were in the habit of calling him by the nickname or the name to which FRASER has sworn, he did well to absent himself from their society. That would be a reason why BETTY did not come much into contact with him, and would account for the deficiency of his observation of ROGER TICHBORNE. At this time the worm was beginning to turn from the feet of those who were treading upon it. I don't wonder that that woman saw the tears running down his cheeks: and I don't wonder that he must have thought any kind of existence preferable to the wretched, disgusting life which he was then leading. This Major BOTT did not answer me in a straightforward way when I cross-examined him as to the twitching of the eyebrows. He said ROGER TICHBORNE'S hair used to fall over his forehead, and he used to throw it back with his hand. If one of my Witnesses had given an answer of that kind, he would have been told that he was equivocating, and not giving his evidence in a proper manner. Nothing could be plainer than the question I put, and yet he did not answer it. I consider the evidence of this man, therefore, to be worthless. In answer to a Juror, he said he believed the Defendant's hair, when he (Witness) was examined, was darker than it was when he first saw him, and he wondered why none of the Witnesses had been questioned with regard to that. What right had he to "wonder"? He came to give evidence. Captain POLHILL TURNER is the next Witness, and he also seems to have had a little pique against the Defendant, who said something in the Common Pleas about the Witness having on one occasion lost the word of command, which, of course, reflected against Captain TURNER, and seemed to rankle in his mind. He describes ROGER TICHBORNE in this manner: "He was remarkably thin, slight, and angular-looking, with angular forehead and sharp chin." What can be more vague than this description? We know he was slight and thin, but if you look at the Chilian daguerreotype his forehead cannot be described as a narrow one, nor his chin as pointed. The forehead is not narrow, and the chin is round and dimpled, so that Captain TURNER either had no accurate recollection of ROGER TICHBORNE, or was influenced unconsciously in his statement by a feeling of unfriendliness to the Defendant. He said ROGER used to kick his legs about whilst walking, and this is a peculiarity identical with one possessed by the Defendant. He says that ROGER TICHBORNE had an illness at Waterford, on which occasion he was bled. The amount of blood this poor fellow appears to have lost is considerable; indeed, they seem almost to have bled him to death, and I do not wonder at his being sallow and sickly-looking and that he ran away from these surgeons who were as sanguinary as Dr. SANGRADO, and that he kept himself at a distance from them. I ask you to dismiss Captain TURNER from your category of Witnesses, and class him with BOTT and BETTY. The Defendant's story with regard to the unfortunate circumstance I have named, though it did not make TURNER so wicked as to tell falsehoods, yet coloured his testimony very much against the Defendant—I refer to the Defendant's statement about the word of command—was characterised by Captain TURNER as a "gratuitous lie," who said that if such a thing had taken place he would have been censured and reported at headquarters. That something of the kind actually did happen, however, we learn from Private BENJAMIN OVEN, who said he remembered the troop getting into a state of confusion, but he did not recollect who was in command at the time. ALEXANDER CUMMING likewise gives a full account of the matter. The Defendant may have been mistaken in his selection of the officer who was in command, and was wrong in identifying Captain TURNER with it. But even if this is so, and probably it is, I say it is very hard to charge him, as the Witness TURNER does, with uttering a "gratuitous lie."

The LORD CHIEF JUSTICE: The Defendant's Counsel first mentioned the matter; therefore it must have been by the Defendant's instructions.

Dr. KENEALY: The Defendant must have believed the matter. It could not be to his interest to make enemies in this way.

The LORD CHIEF JUSTICE: The Counsel put it to him in this way: "You were the occasion of his being reported then; has he had an ill-feeling against you ever since?" The Defendant said, "Yes," and further he said that he was the person who supplied TURNER with the word of command.

Dr. KENEALY: I ask you to believe that an impostor would not invent stories without reason, and what was to be gained by a false statement of this kind, if it is a false one? Captain TURNER, therefore, is a Witness whose testimony should be accepted with caution. He looks at the Defendant, as I believe, through a darkened glass. The Witness, when he had a letter from the Defendant, and was asked if he knew the handwriting, replied that he thought the signature was like that of ROGER TICHBORNE. He also says that when Col. NORBURY had a letter from the Defendant, that gentleman said he believed the handwriting on the envelope to be that of ROGER TICHBORNE. And although it is perfectly true that there are a great many of Defendant's envelopes in Court, that particular one cannot be found. In further evidence of the animus of Capt. POLHILL TURNER, it appears that in October, 1870, he had made up his mind against the Defendant, and prepared the questions for his cross-examination.

The LORD CHIEF JUSTICE: I think he said he sat in Court during the previous Trial, and suggested questions.

Dr. KENEALY (after referring to the evidence): He says, "I was asked to put a few questions on paper." He adds, that he sat by the Solicitor-General, and suggested questions. Major JOCELYN is the next Witness I shall bring before you. The description he gives of him tallies with the present Defendant. He says, "he was about 5 feet 8 inches in height, very sallow and unwholesome-looking complexion, very slight and thin, narrow-shouldered, and hollow-chested—in fact, what we should call a 'weed' of a man, with dark brown hair which was very straight, and seemed to come down over his forehead a great deal." He says, "I do not recollect much about him, save that he had a very good hand. I recollect what we call a 'norman' hand—sinewy and narrow, with long fingers." He did not say that ROGER TICHBORNE had a "Norman" hand.

A JUROR: I thought he did.

Dr. KENEALY: I have no doubt you did, but you see it is wrong. Take the daguerreotype, and you will find no long, sinewy hand—no "Norman" hand—but a round, plump one, such as the Defendant has.

The LORD CHIEF JUSTICE: I never heard the term "Norman hand" before, and I don't know what it means.

Dr. KENEALY: WILLIAM the Conqueror had a big hand, my lord, and I take it that the term originated from that circumstance.

The LORD CHIEF JUSTICE: That is your own construction; but I understand it rather to mean an aristocratic hand obtained from a people long established in the country.

Dr. KENEALY: Your lordship remembers when WILLIAM the Conqueror first landed in England. (Laughter.)

The LORD CHIEF JUSTICE: You mean that he fell down and grasped the earth. He could have done that as well with a small as with a large hand.

A JUROR: Would not the word "normal" be used?

Dr. KENEALY: To the best of my recollection, he said "Norman." I think WILLIAM the Conqueror had a big hand because he used a two-handed sword.

The LORD CHIEF JUSTICE: And so did his followers.

Dr. KENEALY: They were all large-handed.

The LORD CHIEF JUSTICE: I scarcely think he would use a two-handed sword, as he would have to manage his horse with one hand. But I know that when I first read the History of England, and when I looked at the picture with more attention than I have since done, WILLIAM the Conqueror was shown bearing his sword in one hand.

Dr. KENEALY: But it was a large powerful sword.

The LORD CHIEF JUSTICE: Besides, the two-handed sword was used on foot and the Norman Knights were horsemen.

Dr. KENEALY: It has been noted that the ancient Romans used very short swords, and the Normans long ones; from which the greater ferocity of the first has been inferred.

The LORD CHIEF JUSTICE: It is clear that when men fought on horseback they must have had longer swords than when they fought on foot.

Dr. KENEALY: However, what I say is, that the hand in the daguerreotype does not give the slightest impression of being long, large, and sinewy—it is rather a soft, flexible and rounded hand, such as you have before you. Major JOCELYN saw very little of ROGER TICHBORNE. He had never noticed the twitching. He had a conversation with the Defendant, who, he said, did not recollect much. Did this, then, seem as though he had been coached by CARTER and M'CANN? The Witness also came to the conclusion that the Defendant could not be ROGER TICHBORNE because he said to him, "Yours is not a horse corps." That was not sufficient to decide a Witness on such a point as the identity of a man, especially of a man who speaks as wildly as the Defendant does. BENJAMIN OVEN said that there was not enough of ROGER to make a good-sized man. He admitted that his head was very similar to the Defendant's, and that is a very strong admission from a man who was in the Carabineers from the time TICHBORNE joined them until the time he left. Colonel GRAHAM comes next. He was quartered with the Defendant at the Cavalry Barracks at Clonmel for four months, and was in the habit of lending him the novels of PAUL DE KOCK; and he says he had no distinct recollection of ROGER'S appearance. To the best of his belief he says TICHBORNE was not a thin man, and he states that the voice and accent of the Defendant are unlike those of ROGER TICHBORNE; and that is a fact that I am not at all surprised at, considering the difference there is between ROGER of then and ROGER of to-day. This Witness was very careful in his answers. The next Witness is JOHN STORES SMITH, and upon his evidence I gave you my full opinion when I last addressed you, and I shall not condescend to allude to him again. WITHERS followed JOHN STORES SMITH, and he remembers ROGER in 1853. He recollects him first when he joined in 1849, and when he left in 1853; that he had a foreign accent; that he was not a neat rider, but he mentions no other peculiarities and he is not asked to described him. He is questioned at the end of his examination, by the Counsel for the Prosecution, "Now is he (the Defendant) ROGER TICHBORNE?" and he answers, "I should think not." In the cross-examination he gives evidence strongly in my favour, as you may perhaps remember. He describes several characteristics of ROGER, which are identical with those of the Defendant. Private GABRIEL SWALLOW pronounces it as his judgment that the Defendant is not ROGER TICHBORNE without condescending to describe him. He is asked by me as to his eyebrows, and he says they were not, to his knowledge, arched and thick. He remembers ROGER'S walk, which was the same as that of any other officer. All this, you know, is absurd; and SWALLOW does not help us very much to a right conclusion in this Case. CHARLES LOCKWOOD is another of the privates in the Carabineers, and he used to speak French with TICHBORNE occasionally. He said he had had a conversation with the Defendant in 1871, but there was nothing important in it, although it enabled him to say that the Defendant was not ROGER TICHBORNE—"was not the old one he used to know." In cross-examination he said ROGER TICHBORNE'S hair used to be of a dark brown colour, but he could not remember the size of his hands or the other peculiarities which have been spoken to. This is all very weak testimony, and if a man is to be convicted of perjury on such evidence as that, a man's life would be scarcely worth having.

And yet it is upon much like it that this Government Prosecution, with its CHILDERS'S, FORTESCUE'S, and GRANVILLE'S in the front or back ranks, venture to ask for a conviction, and support their venture by the strongest means. This is an evil sign of the times. Let us renew our youth-like eagles by living on the food of the Past, and revivify our spirit by such words as ERSKINE spoke. That great advocate in THOMAS WALKER'S Case, warned Government against such prosecutions. "Unjust prosecutions," he says, "lead to the ruin of all Governments; for whoever will look back to the history of the world in general, and of our own particular country, will be convinced, that exactly in proportion as prosecutions have been cruel and oppressive, and maintained by inadequate and unrighteous evidence, in the same proportion, and by the same means, their authors have been destroyed, instead of being supported by them. As often as the principles of our ancient laws have been departed from in weak and wicked times, as often the Governments which have violated them have been suddenly crumbled into dust; and therefore wishing, as I most sincerely do, the preservation and prosperity of our happy constitution, I desire to enter my protest against its being supported by means that are likely to destroy it. Violent proceedings bring on the bitterness of retaliation, until all justice and moderation are trampled down and subverted. Witness those sanguinary prosecutions previous to the awful period in the last century, when CHARLES I. fell. I cannot possibly tell how others feel upon these subjects; but I do know how it is their interest to feel concerning them. We ought to be persuaded that the only way by which Government can be honourably or safely supported, is by cultivating love and affection of the people; by showing them the value of the constitution by its protection; by making them understand its principles by the practical benefits derived from them; and, above all, by letting them feel their security in the administration of law and justice." Noble words! Yet I think our Rulers must have forgotten or despised them when they plunged into a Prosecution like this. (Laughter.)*

[The Court then adjourned.]

On its reassembling,

Dr. KENEALY continued: The next Witness I come to is JOHN NELSON PARKER, a private in the Carabineers, who appears to have been annoyed because the Defendant had not given him an interview. Why he should have refused him an interview if his object was to get himself coached up I don't know; but it goes to prove that this gentleman is really quite indifferent as to whether people identified him or not. I don't say that Mr. PARKER would come here to tell untruths because he was refused this interview; but that he was considerably annoyed at it is shown by the evidence, and particularly that part of it where, being asked if the Defendant is ROGER TICHBORNE, he answers, "It is an insult to common sense; he is no more TICHBORNE than I am the Shah of PERSIA"—rather a strongly-worded judgment for Mr. PARKER to take upon himself to give. This Witness, you will notice, does not mention a single feature of ROGER by which he can say he is not the man. He says, as some other Witnesses do, that his ears were close to his cheeks, but if you look at that daguerreotype you will see that he has distinct pendent lobes.

The LORD CHIEF JUSTICE: *The contrary is generally assumed.*

Dr. KENEALY: Yes, my lord, I know it is. The notion that has been sedulously sought to be impressed on your mind is, that ROGER'S ear was adherent to the cheek, but if you look at the daguerreotype, the pendent ear is unmistakeable.

The LORD CHIEF JUSTICE: Is the daguerreotype like the photograph? *Ears more distinctly adherent than those in it I never saw.* †

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* LAUGHTER IN COURT.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—In an ordinary Police-Court, the slightest approach to merriment on the part of those assembled, is almost invariably suppressed by a cry of "Silence!" I was truly surprised to find, on reading the accounts of the TICHBORNE Trial daily, that the remarks of Witnesses were continually greeted with "Laughter," "Renewed laughter," "Loud laughter," "Great laughter," &c. This was always the case when any reference was made to the personal appearance of the Claimant. I think there should have been some respect paid to the man's feelings.—I am, &c.,

JOHN KEITH SYKES.

† What was this but telling the Jury that the Defendant—who had pendent lobes—was *not* TICHBORNE? Yet others have thought and said that he was *a* TICHBORNE though not ROGER.

"We the undersigned, being the members of the Bristol TICHBORNE and KENEALY Association, who formed the deputation that waited upon Mr. SAMUEL MORLEY, M.P., do hereby declare that he (Mr. MORLEY) used in our presence words to the following effect, viz:—That his (Mr. MORLEY'S) private opinion was that the man, *i.e.*, the Claimant, was not ARTHUR ORTON, but an illegitimate member of the TICHBORNE family, it being impossible that he (the Claimant) could otherwise have possessed so intimate a knowledge of their (the TICHBORNES) family affairs, and that he (Mr. MORLEY) was supported in that view by the late Attorney-General, Sir JOHN COLERIDGE, who stated to him (Mr. MORLEY), in Westminster, that such was also his (Sir JOHN'S) opinion, adding that he (the Claimant) was undoubtedly the cleverest fellow he ever met.

"Signed,—FREDK. FRANKCOM, Sec. F. MANSFIELD.
"WM. S. MATTHEWS. WM. COUNT."

To GUILDFORD ONSLOW, Esq.

DEAR SIR,—In order that you may be forearmed against any constructive denial upon the part of Mr. MORLEY, of his having stated personally to Mr. COUNT (as is conveyed by the Bristol papers), the opinion of J. D. COLERIDGE, permit me to say that if you will turn to the ENGLISHMAN (No. 45), p. 713, you will perceive that Mr. COUNT, in his remarks, did not himself specifically touch upon the *identity* question at all. And Mr. MORLEY'S reply, though following closely upon Mr. COUNT'S observations, was, in fact, certainly addressed at large to the deputation. Mr. MORLEY'S statement, indeed, of what his own view had been as to the personality of the "Claimant," would seem rather to have borne reference to that which you will find I had previously said upon *that* matter.

Having myself undertaken to draught the interview (aided by the local Secretary and Mr. MANSFIELD), I am able to endorse the accuracy of the words attributed to Mr. MORLEY, and I may observe that it was simply out of consideration to the latter that we refrained from giving in the ENGLISHMAN what he stated to us *as to* COLERIDGE. I may add that Mr. MORLEY asked if I would oblige him with a copy of my remarks, and I at once handed him my MS. (which he yet retains.) It was at Mr. M.'s request that no reporters were present.

DR. KENEALY: The ear in the photograph is cut off by a dark shade, which could not possibly exist in nature; because the light falls the other way. And this is what I complain of, that it was put there for the purpose of obliterating the lobe.

The LORD CHIEF JUSTICE: Oh! (Laughter.) You are always assuming or imagining some fraud, Dr. KENEALY. (Loud laughter.)

MR. TAYLOR (Juror): We cannot see them. You have a strong magnifier surely.*

DR. KENEALY: I only used my glasses.

The LORD CHIEF JUSTICE: I would like to examine it, because I confess my impression was directly the reverse.

DR. KENEALY: I think the lobes are quite distinct.

The LORD CHIEF JUSTICE: I see a dark mark.

DR KENEALY: That is put there for the purpose of hiding the lobes.

The LORD CHIEF JUSTICE: *Do you think that has been done purposely?*

DR. KENEALY: I do.

MR. TAYLOR (Juror): If you look at the other ear you won't see any lobe.

DR. KENEALY: I have no objection to your taking both ears.

MR. TAYLOR (Juror): We cannot see the lobes.

The LORD CHIEF JUSTICE: There are no pendent lobes that I can see.

MR. TAYLOR (Juror): We are all agreed.

DR. KENEALY: Well, Gentlemen, if you are satisfied of that, all that I can say is that we will never agree.

A JUROR: We will agree to differ.

DR. KENEALY: If you don't see it you don't see it; but I am perfectly astonished.

MR. TAYLOR (Juror): Let me look at it again, and I will try if I can see it. (*The daguerreotype was handed to the Juryman, and he examined it with a magnifying glass.*)

DR. KENEALY: I say the pendent lobe is shown as plainly as daylight under that blotch. It is perfectly idle to say it is not. The photographs taken from that daguerreotype, strangely enough, do not show the ear at all, and that which comes from Lady DOUGHTY has a dark line where none should exist.

The LORD CHIEF JUSTICE: It is the shade of the ear.

DR. KENEALY: It is there to cut off the ear.

The LORD CHIEF JUSTICE: It does not do it.

DR. KENEALY: I think it does.

MR. TAYLOR (Juror): We can see no lobe.

The FOREMAN: The photograph is a perfectly fair copy of the daguerreotype, and has never been touched. What you refer to is merely a little bit of the back hair.

DR. KENEALY: Oh, no; it is not hair.

MR. Justice MELLOR: I am bound to say that is what it struck me as being.

DR. KENEALY: Well, Gentlemen, if you think so, you and I can never agree.

The FOREMAN: There are twelve to one, but you have shown great perseverance.

DR. KENEALY: I don't want any compliment for perseverance; but I have a strong impression on the subject. STEPHEN SHEPHERD is the next. He was a Lance-Corporal in the Carabineers, and is now a Superintendent of Police in Somersetshire. He had an interview with the Defendant in October, 1869, and said to him, "Your eyes to me by this light resemble Mr. TICHBORNE'S." Now it is certainly strange that this wanderer from Wapping should have so many things in common with ROGER TICHBORNE. First there is the peculiarity of the jaw, then the peculiarity in his walk, then his peculiar twitch; there is the same colour of hair, the arched eyebrows, and now we have SHEPHERD distinctly saying his eyes resemble TICHBORNE'S. All these things are very odd—so odd that I hope they will make you think twice before you endorse the conclusion that some of you seem to entertain now. This Witness, you will observe, tells the Defendant that if he will answer certain questions he will go into any Court in England and swear he is TICHBORNE. One of the questions related to Colonel JONES, and for some strange reason the Defendant answers that there was no such man in the regiment, although he knew very well there had been, and had shortly before written to that very Colonel JONES complaining of his conduct in denouncing him as an impostor. Where am I? Am I to set down SHEPHERD as a deliberately false Witness? If I were, I should have someone down on me in a moment. Did he say it, or not? Why, if he said that *after* writing the letter to General JONES, does it not at once give you a clue to the class of mind which he has? He regards nothing; he remembers nothing —this subtle plotter. When I ask you to deal with him as a man different from anyone else there is a smile of incredulity on your faces. Yet am I not justified in doing so? SHEPHERD told him that the answer was nonsense, and it *was* nonsense. Is not this man half insane? Was there ever before such a reckless specimen of a mortal? He afterwards says, "Oh, by-the-bye there was an officer of that name." He is asked about the livery CLARKE wore. CLARKE was his military servant, and he could not tell. As if a man who learns everything from BAIGENT, BOGLE, CARTER, and MCCANN could not tell what the Tichborne livery was!

The LORD CHIEF JUSTICE: He did not wear the livery of the TICHBORNES.

DR. KENEALY: Why should he not?

The LORD CHIEF JUSTICE: Because the man tells us the livery he wore a little further on.

(Dr. KENEALY read the evidence, which showed that the man wore a black coat and breeches.)

The LORD CHIEF JUSTICE: That is not the Tichborne livery.

DR. KENEALY: I don't know why not.

The LORD CHIEF JUSTICE: Because no livery is black, unless the family are in mourning. At least I never saw it so.

DR. KENEALY: Well, if this unfortunate wretch did not remember Colonel JONES, he is not likely to recollect CLARKE'S livery. He is supposed to remember everything! Again, this Witness tells about the Defendant smoking a great deal while he was with him, and it is another curious thing that he should have the same habit as ROGER TICHBORNE in this respect. You cannot pass a stationer's window but you see half a dozen photographs of the Defendant with a cigar in his mouth. ROGER TICHBORNE, you remember, had his portrait taken with a pipe in his mouth as the Vice-President of that distinguished Snob Club, and as the child is father to the man, it is not unnatural that the Defendant should exhibit himself all through London with a cigar in his mouth.

The DEFENDANT: Don't say that.

DR. KENEALY: I will say it, because it is true.

The DEFENDANT: It is not true.

DR. KENEALY: Then this Witness relates a highly intellectual conversation which he had with the Defendant as to different kinds of whiskey, and says that as he was leaving the Defendant asked him if he would like a paper, and gave him a copy of the 'Field.' It is said a man is known by the company he keeps; and we may judge of the Defendant's tastes from his having the 'Field,' a paper which I believe gives a record of dog fights, and things of that kind.

The JURY and the LORD CHIEF JUSTICE: Oh, no, no.

DR. KENEALY: What is it, then?

The LORD CHIEF JUSTICE: It is a very superior paper.

DR. KENEALY: Then I apologise to the owners of the 'Field.' I thought it gave all field sports.

The LORD CHIEF JUSTICE: It deals with every kind of country pursuit.

DR. KENEALY: I thought it was what is called a fighting paper. (Laughter.)

The LORD CHIEF JUSTICE: Oh, no.

DR. KENEALY: Well, Mr. SHEPHERD seems to have been very much annoyed that his old commander did not accept an invitation he gave him to come and see him. He evidently recognised in him some of the features of ROGER, but there were others which he did not observe. He never observed anything about ROGER'S eyebrows, and never noticed if he was in-kneed. I ought to continue this interesting conversation. SHEPHERD, alluding to the soda-water and gin, said, "Is that your usual drink?" to which the Defendant replied, "No, I usually drink whiskey, and get through thirteen pints a week." Can we feel surprised, therefore, that the Defendant did not recollect some little things which Mr. SHEPHERD asked him? Therefore the latter concludes he cannot be the man. He evidently, however, thought that he resembled his old officer, for he would not have been anxious that any impostor should come and visit him for the purpose of getting him as a Witness to support a false claim, and that he was so anxious is quite obvious. When the Defendant does not come, Mr. SHEPHERD communicates what has passed to Lord ARUNDELL of Wardour, whom I have always regretted we have not had here to tell us what he knew of ROGER TICHBORNE. Mr. SHEPHERD confesses that he has said to many people the Defendant could not be a gentleman, because he had not kept his appointment with him; and this, I think, shows that there was an animus on his part, caused by the slight to which he thought he had been subjected. I do not say he is a false Witness, but simply that he speaks under the influence of an animus. The description he gives of ROGER is curious and vague. He says he was a poor thin young man, with long straight hair and thin legs, and then comes to the conclusion that the Defendant is no more ROGER TICHBORNE than he himself is; and adds that although he had been fed for the purpose ROGER TICHBORNE could never have developed into such a man. This, of course, is all nonsense, for we constantly see men who have been very thin get remarkably stout. I come next to CHARLES BACON. He was a Sergeant in the Carabineers, and says he was constantly and daily in the habit of seeing ROGER TICHBORNE when he was at the barracks. Of course he decides—as if he were a despotic Judge—that this man is not he; and the reasons on which he bases his decision are worthy of your notice. He says he is "different in appearance,

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If it would be satisfactory to you to know the exact terms (quoted from memory) which Mr. MORLEY used, please append, after the words "*family affairs*" (page 714, line 15), as follows:—"And, in fact, the late Attorney-General, now Lord COLERIDGE, has expressed to me the self-same view. I met with him on his way (to or from) Westminster Hall, and he told me as much; and he said also that he had never met with a shrewder fellow in his life."—I beg to subscribe myself, dear sir, very respectfully yours, WM. S. MATTHEWS.

8, Southwell-street, Kingsdown, Bristol: April 1st, 1875.

* Another example of the insolence in which the Jury now frequently indulged.

voice, and altogether," but when I cross-examine him he admits that so far as appearance was concerned the principal difference was in the size. He also speaks to the small hands and feet, and the twitch in the eyebrows, which, I say, are peculiarities of the Defendant. He also says ROGER was not a man to make 26 stone, but that is all rubbish. JOHN HANRAHAN comes next. He was a Trumpet-Major in the Carabineers, and the only point on which my learned friend Mr. Serjeant PARRY thought it wise to ask him as to personal appearance, was what there was in ROGER TICHBORNE that made him decide against his identity with the Defendant? and the Witness answered that it was his nose in a great measure; and then he explained that ROGER'S nose was something like the thumb of a boxing-glove. (Laughter.) Oh, dear! I should hardly have expected such evidence would have been offered in a Court of Justice. Whoever heard of such a nose? I have seen boxing-gloves, when I was a young fellow at College, but I never saw a nose that reminded me of them. But he made the nose still more remarkable. He said the nose was not set very straight. He was asked if he knew what an aquiline nose was, and he replied, "Yes, curved;" and adds that a nose inclined to turn up was "celestial." (Laughter.) He is then asked if ROGER'S nose had either of these forms, upon which he replied that "it turned aside, and then turned more upwards." (Laughter.) So that this nose took a detour to the right or to the left, and having accomplished that, it twisted itself upwards. (Laughter.) I now come to JOHN IRWIN or IRVING, whose father was Mess-Waiter in the Carabineers. This Witness tells us ROGER TICHBORNE spoke like a Frenchman, and my learned friend drops his Witness there, and thinks that is enough to prove the non-identity of the Defendant. He saw him at the late Trial, and comes and says, of course, that the Defendant is not TICHBORNE. In cross-examination he says the hair of TICHBORNE was darker than that of this gentleman, and he cannot say whether the nose turned to the right or to the left. He says that he had small hands and feet, and was narrow from the hips. A great many of the peculiarities described by the Witness as existing in ROGER TICHBORNE are to be found in this Defendant. WILLIAM PEACHEY is the next Witness to whom I call your attention. He was in the Carabineers, but does not seem to know much of ROGER TICHBORNE, but he comes to the conclusion that the Defendant is not identical with him. This Witness mentioned no distinctive feature as a ground for coming to such a conclusion. This man was the person about whom the Defendant was examined, as Quartermaster PEACHEY. He was not Quartermaster then, and I leave it to you to say whether it was fair to the Defendant to have the name suggested to him in that way. I now come to Major FOSTER, who saw ROGER TICHBORNE for six or seven months after he joined the regiment. After that they do not appear to have met—at least I see no evidence to justify that conclusion. There is the gentleman who played a practical joke upon this young man by sending him in full uniform to dine at Lady CLANRICARDE'S with the Duke of CAMBRIDGE. Well, that is a very harmless joke, and if they had confined their jokes to that I should not have grumbled, but when they cram his bedroom with bad women for the purpose of "trying him," the case is different; and I think wholly indefensible. Nor am I astonished that the Defendant was happier in his wild and lonely rides in Australia, in hunting the Emu, in camping out at night—nay, even in killing bullocks—than in associating with such persons as then graced—I will not say disgraced—her Majesty's Sixth Dragoon Guards. Major FOSTER remembers that ROGER TICHBORNE, poor fellow! was in the habit of singing the *Marseillaise* and *Malbrook s'en va t'en guerre*, &c. It was not much of singing, I dare say. Major FOSTER says he agreed to desist from his annoyance to ROGER TICHBORNE on finding that the latter had a religious and conscientious objection to them, but I must ask you to dismiss that idea from your minds altogether. Major FOSTER gives an account of his interview with ROGER TICHBORNE, but he does not mention one of his features, though he speaks of his voice. In answer to me he said he had blue eyes, and that he had a woe-begone look. After half a minute's brief look at the Defendant, Major FOSTER takes upon himself to say that he does not recognise in this gentleman his former comrade. Major FOSTER, who is no doubt a very accurate and clever man, actually made a mistake of two years to the time when he first saw the Defendant. He said it was in 1867, but afterwards he said it was 1869. Now, I should never think of calling Major FOSTER a liar or perjurer because he made a mistake of that kind. These errors as to dates are incidental to a Case of this kind, and I hope you will make allowance for the Defendant when he falls into similar errors. Major FOSTER says from what Mr. BOWKER told him, from what he had heard from other sources, and from what he knew of his various proceedings, he came to the conclusion six weeks or two months before he called upon him that he was an impostor. Now, is there any one who is not sorry to hear such a gentleman make such an avowal? Gentlemen, before I pass on to the next Witness, Mr. MCMAHON is anxious that I should call your attention to the date of the Defendant's letter to General JONES. It is dated May 31, 1869, and the interview with the Defendant was on the 9th of October, in the same year. The next Witness is Mr. MCEVOY. He was in the same barracks with ROGER TICHBORNE off and on for six months. In all his evidence he does not mention one word as to the personal appearance of ROGER TICHBORNE—no doubt for very good reasons.

The LORD CHIEF JUSTICE: Was he asked?

Dr. KENEALY: No, my lord; these questions seem to be avoided.

The LORD CHIEF JUSTICE: I had observed that they asked if the Witnesses remembered ROGER TICHBORNE, and then if the Defendant was ROGER TICHBORNE, and they stopped there.

Dr. KENEALY: Yes, my lord; nearly all that the Witnesses said on those details were given in answer to my questions. That was a nice free-and-easy mode.

The LORD CHIEF JUSTICE: I agree with you.

Dr. KENEALY: The motive of which was known only to themselves. Mr. MCEVOY seems to have come into Court with an impression that was common to a good many people, that the Defendant was always dyeing his hair, because he said it had been a good deal lighter than it was then. In cross-examination he said that ROGER'S hair lay straight upon his forehead as if it had been in a bucket of water, and that confirms the statement that he put a good deal of oil upon it. In answer to me, he said both ROGER and the Defendant have marked eyebrows. He recollected his moving his eyebrows when he laughed, and used a phrase which I should have thought would have come from Wapping as applied to ARTHUR ORTON, and he says the Defendant has "squashy feet." He described ROGER singing the tune of the *Marseillaise*. He used no words, but gave a shriek or something very much like it at the end of each verse. I do not think Mr. MCEVOY came out in very brilliant colours in his connection with the Defendant. There is another passage about the *Marseillaise* with respect to which the Witness tried to get the Defendant to pronounce French. The Defendant accordingly sang a portion of the *Marseillaise*, and Mr. MCEVOY says he does not think it gave him any sort of idea of TICHBORNE, unless it were that the Defendant gave a shout, a loud screech which ROGER TICHBORNE might have done when he came to the *Marchon*. I may here interpose a remark, that I have seen mentioned in an excellent work which has just been published by Mr. VICKERS of the Strand, that one of the BONAPARTES, JOSEPH, the brother of NAPOLEON, forgot his native language.

The LORD CHIEF JUSTICE: Do you mean to say that they both forgot Italian?

Dr. KENEALY: No; only JOSEPH. He left Corsica at 12 or 14 years of age, and within a few years had entirely forgotten his native language. It is an extraordinary historical fact, Gentlemen, and may throw light upon the Defendant's forgetfulness of the *Marseillaise* and other French things.

The LORD CHIEF JUSTICE: On what authority do you make that statement?

Dr. KENEALY: As I have said, on the authority of a work published by Mr. VICKERS of the Strand.

THE LORD CHIEF JUSTICE: What work?

Dr. KENEALY: My lord, I shall bring it with me for your lordship when next we meet, on Monday.

The LORD CHIEF JUSTICE: Do so.

Dr. KENEALY: Certainly. Gentlemen, ALEXANDER CUMMING is the next of the military Witnesses: and I am very glad to say, the last of the Carabineers I shall have to trouble you with. He knew ROGER in Dublin. He says that he only saw him at outquarters. Then Mr. Serjeant PARRY asks him whether he remembered his French accent? I should have thought that the Prosecution would have endeavoured to get a physical description from this Witness, rather than an opinion of what I shall call a metaphysical subject. The Witness says ROGER was 5 ft. and 8¼ inches in height, and then he is asked the extraordinary question, "Did you ever see anything about him as if he was likely to turn out a very fat man?" CUMMINGS never noticed that ROGER was in-kneed or that he turned out his toes. He never noticed his eyes, nor would he swear to his eyebrows; so that his knowledge was of a very limited description. The testimony therefore of ALEXANDER CUMMINGS is, I submit, not worthy of your notice; and this completes all I have to say of the military Witnesses.

[It being ten minutes to four, and Dr. KENEALY being about to enter upon a new branch of the Case—viz., the Family Witnesses—The Court adjourned till half-past ten on Monday.]

ONE HUNDRED AND FIFTY-FIRST DAY.—MONDAY, JANUARY 5TH, 1874.

Dr. KENEALY resumed his address. He said: May it please your lordship, Gentlemen of the Jury, I promised on Friday to read to you that remarkable passage in reference to JOSEPH BONAPARTE to which I referred, and which is contained in a paper entitled 'The Boyhood of Napoleon.'

The LORD CHIEF JUSTICE: In what work?

Dr. KENEALY: 'Every Boy's Journal,' my lord, published by Mr. HENRY VICKERS, Strand.

"In the year 1874 JOSEPH BONAPARTE, then 16 years of age, returned to Corsica. During his absence he had entirely forgotten the Italian, his native language, and could neither speak it nor understand it when spoken."

The LORD CHIEF JUSTICE: Who is the authority?

Dr. KENEALY: Only the writer.

The LORD CHIEF JUSTICE: Who is he?

Dr. KENEALY: I do not know.

The LORD CHIEF JUSTICE: I should like to know in what language NAPOLEON carried on conversation with O'MEARA in St. Helena?

Dr. KENEALY: I apprehend, in French.

The LORD CHIEF JUSTICE: No; In Italian, O'MEARA did not know French. He also conversed in Italian with the surgeon.

Dr. KENEALY: This has reference to JOSEPH BONAPARTE.

The LORD CHIEF JUSTICE: Oh, I thought you referred to NAPOLEON.

Dr. KENEALY: No, my lord; to JOSEPH. The writer goes on—

"JOSEPH remained at home about a year, devoting himself to the care of the family, when NAPOLEON obtained leave of absence, and to the great joy of his mother, returned to Corsica. He brought with him two trunks—a small one containing his clothing, and a large one filled with his books. Seven years had now passed since the two affectionate brothers had met. NAPOLEON, like JOSEPH, had also entirely forgotten the Italian language; but, chagrined at the loss, he devoted himself energetically to its recovery. 'NAPOLEON'S habits,' writes JOSEPH, 'were those of a young man retiring and studious.'"

The fact, therefore, to which the Lord Chief Justice has drawn attention does not weaken the force of the fact that JOSEPH BONAPARTE forgot his native language, although he devoted all his energies to reacquire it.

The LORD CHIEF JUSTICE: I should like to know who the writer is. I have looked into various lives of NAPOLEON, and found nothing of the sort. He certainly spoke Italian to O'MEARA and the surgeon at St. Helena.

Mr. Justice MELLOR: This shows how dangerous it is to admit as evidence of fact a matter which is only authenticated in that way.

Dr. KENEALY: I do not at all dissent from your lordship's view of the matter.

Gentlemen, there are two or three Witnesses whom I omitted to mention on Friday, to whom I must now briefly refer. One was THOMAS RICHARDSON, veterinary surgeon at Clonmel. He knew very little about ROGER, and you remember the observation of the Lord Chief Justice, and will agree in it, "You might have left this Witness in Clonmel." CHARLES BATEMAN is the next. He was a Sergeant and constantly saw ROGER, but he is not asked to give any account of him. ROGER, he says, never spoke to him. He says he was a knock-kneed man, who had small hands and small feet, while the Family try all they can to give him large hands. The next person I have to allude to is JEREMIAH HEALY, caretaker of the racquet-court at Clonmel, and billiard-marker. All he can say of ROGER is that he was sallow, dark, and small-shouldered; whether he meant that he had sloping shoulders I do not know. Now, while the Defendant is seated, his shoulders do not appear to be sloping, but when standing or walking, you will find that his shoulders slope "like," to use the words of the Witness, Captain NANGLE, in reference to ROGER, "a champagne bottle." It is a most remarkable fact, that in that respect ROGER and the Defendant are identical. Again, the Witness spoke of ROGER as having an oval face, and in that respect, too, they are alike. The Witness also established another point of identity, namely, that ROGER was in-kneed. We know that ROGER was 5 feet 8½ inches when he joined, and the Witness said he was between 5 feet 8 inches and 5 feet 9 inches. The voice and accent of ROGER TICHBORNE, he said, was like those of a hurdy-gurdy player—so that it was not the soft, musical voice others would have you believe he possessed. I do not know, Gentlemen, whether you would like to see the Defendant's shoulders as he stands up?

[The Jury assented, and Defendant stood up.]

Dr. KENEALY: You see, Gentlemen, that his shoulders now slope like a champagne bottle.

Mr. TAYLOR (Juror): It must be a magnum. (Laughter.)

Dr. KENEALY: So long as it is a champagne bottle I do not care as to the size.

I now come to the Family Witnesses, and I commence with Mrs. BOUVERIE. She first saw ROGER at Knoyle, when he was five years old, but did not see much of him after her marriage. She saw him shortly before he went to South America, and said she recollected his features perfectly. But her recollection turned out to be so imperfect that she swore he had no twitch in his eyebrows and that he was not in-kneed or knock-kneed—evidence not at all consonant or in harmony with the testimony of the other Witnesses. He walked, she said, loosely, and moved his arms and shoulders in a kind of careless manner. This lady with her dim recollection of ROGER, took upon herself, however, to say that the Defendant is not he, and she gave as one reason that ROGER was slight and the Defendant stout—as if slight men did not often get fat; and again, that ROGER'S hair was long and the Defendant's short—as if a man at all periods of his life wore his hair in the same way. Mr. BOUVERIE was the next Witness. He only saw ROGER half a dozen times, but said he was a slim young man, nearly as tall as himself, and he appeared to be over six feet.

Mr. SHEPHARD (Juror): Oh, no! at most five feet ten.

Dr. KENEALY: I thought he looked that.

Mr. SHEPHARD (Juror): No; he is a personal friend of mine.*

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* It will never, we suppose, be known how the Tichborne Jury were constituted, or whether they had all been packed beforehand. Who and what they really were will be seen from the Pamphlet, entitled *The Tichborne Jury*, which appears at the end of this *Trial*. One of the Jurors is known to have regretted his verdict.

The following is a copy of the Petition which he (Mr. DUNSBY) addressed to Her Majesty:—

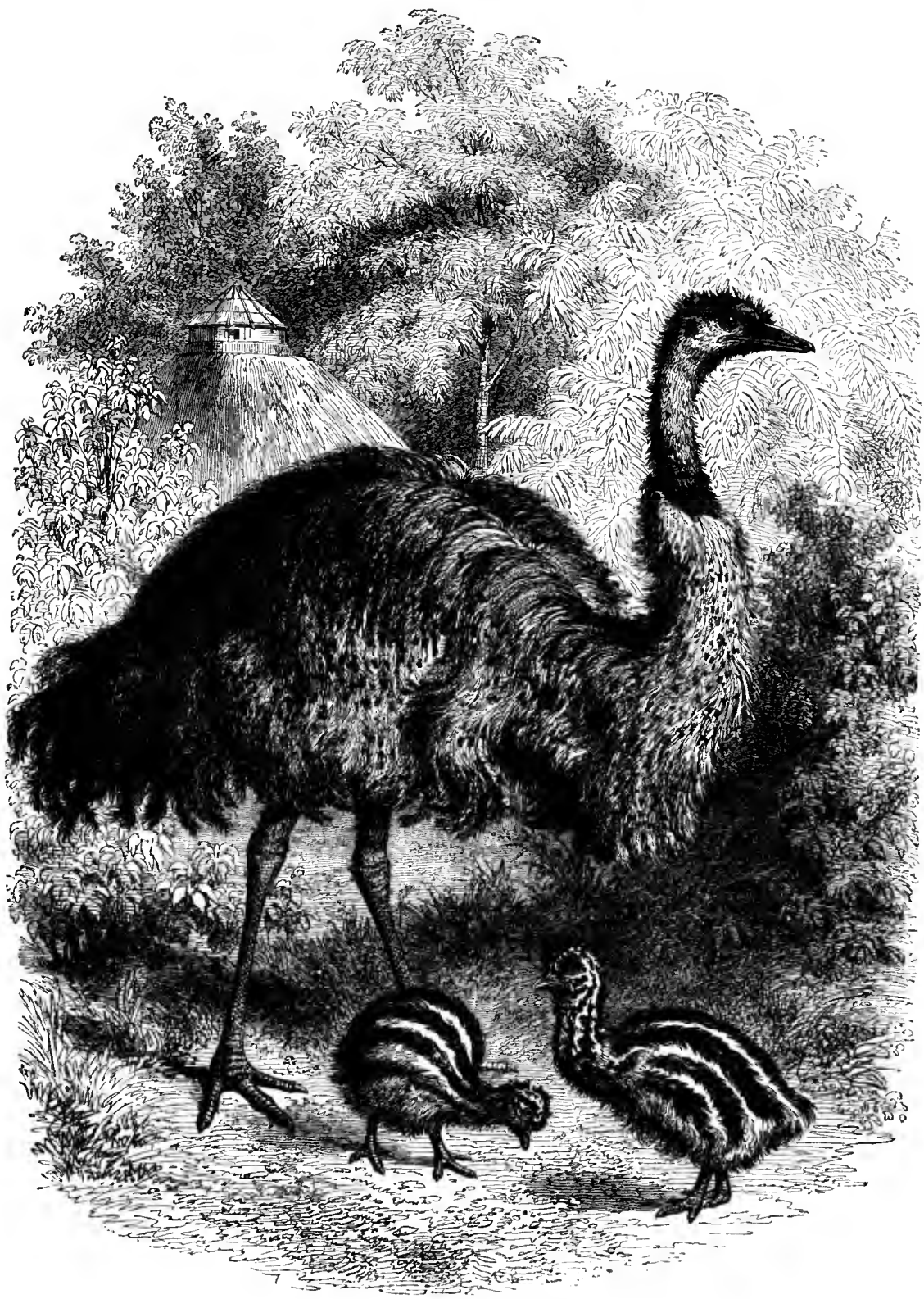
"TO THE QUEEN'S MOST EXCELLENT MAJESTY.

"The humble petition of CHARLES DUNSBY, of 253, Oxford Street, London, most respectfully sheweth—

"That your petitioner was one of the Jury on the TICHBORNE Trial, and in the month of February, 1874, agreed to the verdict then delivered against the Defendant, whereby he is now in penal servitude under a sentence of fourteen years; that your petitioner does now most firmly believe that he was in error in agreeing to such verdict, and that the Defendant is not ARTHUR ORTON, as thereby he was declared to be; that since the said Trial your petitioner has become informed of many facts, which, if known to him at the time would have prevented his agreeing to such verdict, many of them being such as the Defendant could not have brought in evidence before the Jury, even if he had been provided with the money required for that purpose, and, amongst others, your petitioner begs humbly to refer to the evidence of the brother and sisters of ARTHUR ORTON; that the Lord Chief Justice, in his address to us, as the Jury, stated that the Case upon the evidence was one of great doubt and difficulty, and that the omission on the part of the Defendant to call as Witnesses on his behalf the brother and sisters of ARTHUR ORTON seemed to be conclusive against him, or to that effect; whereas it now appears, by affidavits sworn to by CHARLES ORTON, the brother of ARTHUR ORTON, and by the two sisters of ARTHUR ORTON, that the Defendant is not their brother, and that as to the said CHARLES ORTON, that he was during, and for a long period previous to, the Trial retained and paid by the Solicitor of the Treasury one guinea per week, in order to give evidence on behalf of the Prosecution, but was not called as a Witness; and that as to the sisters, they also had been retained and paid as Witnesses on the previous Trial in the Court of Common Pleas against the Defendant, but they also were not called upon to give evidence on either of the Trials; that your petitioner firmly believes that if the Lord Chief Justice—of course uninformed of these facts—had not cast upon the Defendant the duty of calling such Witnesses, had known that they were all the time, some or all of them, in the pay of the Prosecution, others of the Jury would not have agreed to a verdict of guilty, as your petitioner humbly declares that he would not himself have agreed to such verdict; that your petitioner has read the petitions to the House of Commons, signed by many hundreds of thousands of persons, expressing their belief that there has been in this Case a grievous miscarriage of justice, and praying that that House would be pleased to address your most gracious Majesty that the Convict should be released from penal servitude, or that there should be further inquiry; that your petitioner deems it to be his duty, as a loyal and dutiful subject of your most gracious Majesty, to join in the prayer of so many hundreds of thousands of persons, and thus humbly to address to your most gracious Majesty in person, his most earnest supplication and entreaty that your Majesty will be pleased to take into your most gracious consideration the extraordinary and unprecedented circumstances of this Case, and that your most gracious Majesty will be pleased to give order that the Defendant be forthwith released, or that there be further inquiry; and your petitioner, as in duty bound, will ever pray that your Majesty's most glorious reign may long continue, and that loyal and heartfelt affection to your Majesty's person may ever be united with faith and complete confidence in the just and merciful administration of the law by those to whom such duties are committed. "CHARLES DUNSBY."

Mr. DUNSBY only did his duty in forwarding the above Petition. We hope his example will be followed. Surely Mr. JONAS TURNER, of 183, Edgware-road, will do the same. Almost to the

Dr. KENEALY: I took him to be taller. ROGER, he said, was correctly described by Mrs. BOUVERIE, and he agreed with her that the Defendant was not ROGER TICHBORNE. In my opinion—it is for you to judge of it—nothing could be more weak than the evidence of that gentleman. The other sister, Lady RAWLINSON, saw Defendant just before he went to South America. This lady might be a very good Witness if she had not made up her mind so early that the Defendant was an impostor. There was, she said, a discussion in the family on the subject, and a general disinclination to believe that the Defendant was ROGER. Undoubtedly, at one time they honestly believed that ROGER was dead, and she gave as a reason for their feeling against the Defendant that ROGER'S reappearing would be so strange and extraordinary an event. Gentlemen, if we disregard events because they are strange and extraordinary, a great many that are perfectly true will have to be erased from history. Every inquiry, she said, had been made as to the 'Bella.' ROGER'S father was satisfied he was dead, and his will was proved.



THE EMU.

These were the additional reasons for her belief, before she ever saw the Defendant, that he was an impostor. ROGER'S hands were long and thin, and he had large knuckles. If he had they must have been rendered prominent by the surrounding leanness There is nothing inconsistent in her description of ROGER with that of the Defendant, making allowance for his present physical condition. This lady said she had interviews with Lady TICHBORNE, and asked to see the Defendant's letters, which she declined to show her. She said to Lady TICHBORNE that it was strange the Defendant did not mention any of his old friends, to which Lady TICHBORNE made the sensible answer, "Young men make new acquaintances." Then Lady RAWLINSON said to her, "What will you do if the door opens and an impostor enters?"

last moment Mr. TURNER led every one to think that he would not find a verdict of Guilty. Mr. W. S. RICHARDSON, of the 'Hope,' St. John-street, Clerkenwell, we believe regrets the verdict. He certainly laments his Vote of Censure on Dr. KENEALY, who has been proved to have in no wise deserved it. Cannot Mr. RICHARDSON come forward and do something?

and Lady TICHBORNE said, "I know he is my son." How did she know? She saw by his letters that he was, and she knew it by her recollection of the card case, and by the brown mark on his side. Not a single question was asked of this lady as to the personal appearance of ROGER. All she said was that when she saw him last he was not strong, and that he was subject to spasms. She was so little observant that she pledged herself to the statement that there was not one atom of resemblance between the Defendant and ROGER, and that the latter had no twitch.

The LORD CHIEF JUSTICE: I have endeavoured to reconcile the evidence of the Witnesses on that subject. It may be that when ROGER was young the twitch was so slight that many persons would not notice it, but that as he grew older it became habitual with him.

Dr. KENEALY: It may be, my lord, that that is a solution of the discrepancies.

The LORD CHIEF JUSTICE: When we have discrepancies between persons all of whom are entitled to confidence, there must be some way of reconciling what they say.

Dr. KENEALY: Your lordship has suggested a possible and probable solution of the difficulty. ROGER undoubtedly had the twitch when he was in the army. Another mistake which this Witness, without any intention to deceive, fell into was that the Defendant did not bear the slightest resemblance to any of the Family; the contrary of which is established in proof, as I have already pointed out. For instance, it is proved that this gentleman in appearance and figure is like Mr. JAMES TICHBORNE. I do not know whether you noticed his resemblance to Mr. ALFRED SEYMOUR when that gentleman was in the box. I certainly did. It is, therefore, a mistake to say that he bears no resemblance to any member of the Family. It is unfortunate that the Defendant did not go to the Family meeting convened by Mr. SEYMOUR. I have already given you reasons for it. Another is, that he was advised not to do so by Mr. HOLMES. Probably it would have been better if he had swallowed his pride and anger at not being recognized and received at first, and gone there with his Mother, or some friend like Mr. HOPKINS. It might be that all difficulties might then and there have been smoothed over, and that those ladies and gentlemen might have become convinced that this gentleman was the long-lost ROGER. Gentlemen, it is only another instance of the unfortunate advice which Mr. HOLMES was, as it seemed to me, remarkable for giving to his Client. This Witness, Gentlemen, saw the Defendant first in Court. She came convinced that he was an impostor, and therefore to condemn him, not to try him. This is one of the Witnesses who, I am reminded, speaks of the dissections which ROGER carried on in Paris. She stated, too, that she never noticed anything remarkable about his thumb, adding that she must have done so in playing chess, had such a thing existed. I don't think people usually play chess with the left hand.

The LORD CHIEF JUSTICE: Would not that depend upon the side of the board on which you are moving your men?

Dr. KENEALY: Well, on rare occasions the left hand may be used, but, as a rule, it is the right. Mr. ALFRED SEYMOUR was the next Witness. He would be a very valuable Witness but for the strong bias he took up from the very first against the Defendant. You remember his description of him: "ROGER'S hair," he said, "was darker than my own," which was ridiculous, as his hair was jet black. Mr. SEYMOUR establishes the fact that ROGER had small hands and feet, and stood about 5ft. 8in. or 5ft. 9in., so that he must have grown after he entered the Carabineers. But Mr. SEYMOUR was so forgetful or so deliberately persuaded that the Defendant was not the man that he swore ROGER had no twitch and no peculiarity about his legs. Now, as the Lord Chief Justice suggests, the twitch may have grown upon him by degrees, but what are we to say as to the evidence about his walk? If anything be established in this Case, it is that ROGER had an awkward, in-kneed slouching walk. Mr. SEYMOUR'S attention was called to the evidence as to ROGER being in-kneed, and he is utterly unable to speak to it. On the contrary, he said he never saw anything of it—admitting, however, that ROGER walked very awkwardly. "There was nothing whatever peculiar," he says, "about his legs, save that they were thin." That surely must be a mistake. I am unwilling to use any stronger phrase. I have already characterised this gentleman in language that may be strong, but which I say was deserved, after the scene which you remember between him and the other gentlemen in the lobby of the House of Commons. All I now say is that it is evident he was not inclined to say anything which might tell favourably to the Defendant. I was unable even to get a clear opinion as to the colour of the hair of members of the TICHBORNE Family. He baffled me altogether. His evidence exhibited an animus which is very much to be lamented. Even as to the colour of ALFRED TICHBORNE'S hair, while he admitted it was like that of the Defendant, he said that it was altogether different from the colour of ROGER'S. You will say what amount of credit, considering the other testimony on that head, this evidence is entitled to. He added that ROGER'S hair was many shades darker than his own.

A JUROR: Mr. SEYMOUR'S hair was almost black.

Dr. KENEALY: Oh, yes—next door to black. I must leave you to judge whether the style of answer which I have pointed out was what you might expect from a gentleman in Mr. ALFRED SEYMOUR'S position. He seemed to have been influenced against the Defendant, not so much by his personal appearance as by his conduct in not going to him or speaking to him at the Law Institution. I think you will see a little bit of wounded pride and offended vanity in the evidence. "He saw me," he said, "in the Law Institution, but took not the slightest notice of me." He considered that the Defendant cut him, and no doubt the looking at him without recognition was intended to be a cool cut administered to Mr. ALFRED SEYMOUR. The Defendant is a gentle tempered man, and has no rancour in his disposition; but still he could not but feel deeply annoyed at a man who endeavoured persistently to turn his Mother against him, and to persuade her that he was an impostor. "During the ten minutes I sat close to him," said Mr. SEYMOUR, "he took not the slightest notice of me." From that he infers that he was not known, but he admits that afterwards, when he was pointed out, the Defendant took no notice of him either, and this has evidently hurt and annoyed him. Mr. SEYMOUR says that BAIGENT also did not appear to know him: but that must have been a mistake, for I cannot imagine a universal genius like BAIGENT being ignorant of the person of Mr. ALFRED SEYMOUR. You remember how he spoke of the Defendant drinking brandy and water at the hotel where Lady TICHBORNE lay dead, and it was inferred, till it was shown not to be the case, that he did so in the room in which Lady TICHBORNE lay. Was not the fact mentioned merely to prejudice the Defendant? It ought not to do so. His drinking brandy and water is quite consistent with his grieving deeply, as he must have done, for the loss of his Mother. FIELDING, one of the greatest masters of human nature since the days of SHAKESPERE, mentions in "TOM JONES" that when ALLWORTHY was supposed to be dying, TOM JONES, to drown his sorrow, got drunk, and that fact was afterwards used against him by his enemies, to prejudice Mr. ALLWORTHY against him. There is a remarkable passage in MOORE'S "Life of BYRON," showing how the poet acted on the death of his mother, whom he loved as well as such a being could love anyone. MOORE thus writes of him:

"Whether from a return of early fondness and the all-atoning power of the grave, or from the prospect of that void in his future life which this loss of his only link with the past would leave, it is certain that he felt the death of his mother acutely, if not deeply. On the night after his arrival at Newstead, the waiting woman of Mrs. BYRON, in passing the door of the room where the deceased lady lay heard a sound as of some one sighing heavily from within; and, on entering the chamber, found, to her surprise, Lord BYRON, sitting in the dark, beside the bed. On her representing to him the weakness of thus giving way to grief, he burst into tears, and exclaimed, 'Oh, Mrs. BY, I had but one friend in the world, and she is gone!' While his real thoughts were thus confided to silence and darkness, there was in other parts of his conduct more open to observation a degree of eccentricity and indecorum which with superficial observers might well bring the sensibility of his nature into question. On the morning of the funeral, having declined following the remains himself, he stood looking from the abbey door at the procession till the whole had moved off; then turning to young RUSHTON, who was the only person left besides himself, he desired him to fetch the sparring gloves, and proceeded to his usual exercise with the boy. He was silent and abstracted all the time, and, as if by an effort to get the better of his feelings, threw more violence, RUSHTON thought, into his blows than was his habit; but at last, the struggle seeming too much for him, he flung away the gloves and retired to his room." It would be wrong to conclude that Lord BYRON had no affection for his mother because he indulged in sparring on the day of her funeral. Whatever aberrations that eccentric genius may have had, he always evinced to the latest moments of his life the tender love with which he cherished every remembrance of his mother. We must, therefore, not conclude that the Defendant did not feel poignant grief at the death of *his* mother because he had brandy and water after his mother's death. There was an evident animus in this Witness against the Defendant which ruled his evidence, which perhaps he was not aware of himself—the human mind is such a curious thing. It must have been very galling to Mr. SEYMOUR not to be mentioned in ROGER'S will, and that may have operated on his mind; or perhaps it may have been the persistent way in which the Defendant "cut" him. You have been told so often that perhaps you have begun to believe it, that the Defendant was not able to recognise any one at the Law Institution. But that is not true, for he says he recognised Mrs. GOSFORD and Quartermaster FRASER, whom he had not seen since he left England.

The LORD CHIEF JUSTICE: That was on re-examination.

Dr. KENEALY: Yes, my lord: but I may point out that an impostor would have recognised Mr. FRASER, not by the rank he held when ROGER TICHBORNE went away, but by that which he held at the time of the examination, namely, as major. He also mentioned other persons, and so the idea to which I have referred is a perfectly unfounded one. I now come to Mr. HENRY DANBY SEYMOUR. He is a Witness whom I should have been glad to have on my side, on account of the ample knowledge which he had of ROGER TICHBORNE; but unfortunately his feelings also seem to have been wounded by the Defendant's refusal to come to that Family meeting. Mr. DANBY SEYMOUR says he thinks there was a difference between the voice of the Defendant and ROGER'S, but one would have thought that he would have been able to speak specifically if there had really been any vital difference. On the whole Mr. DANBY SEYMOUR'S vague generalities as to ROGER TICHBORNE rather help me than otherwise.

For instance, he does not remember the twitching. That would be very curious, except on the supposition suggested by the Lord Chief Justice, namely, that those who were in the habit of seeing ROGER daily did not notice the habit in early life, and that it must have afterwards grown with him. None of us, of course, can be so wicked and profane as to harbour the idea that those great personages have agreed together to be silent about the twitch. Let us therefore be content with my Lord Chief Justice's solution of the difficulty.

The LORD CHIEF JUSTICE: It is of course open to the observation on the other side that there may have been exaggeration on the part of those who observed the twitch. I have already said that it may be it was very slight at the first, and grew stronger as it became more a habit.

The FOREMAN: It is said that it only occurred when ROGER was excited or animated.

Dr. KENEALY: There may have been a resemblance between the eyes of the mother and son, he said, although he did not remark any great likeness. Further on he said there was a resemblance in the large eyebrows, and that you can see for yourselves, Gentlemen. He did not remember a habit they both had of rolling the eyes at times and hiding the pupils; but in answer to the question, "Perhaps you are not a close observer?" he answered, "Perhaps not." ROGER, he said, had large red hands. That might be expected in ORTON, but not in ROGER; but you can form your own judgment as to this matter, from the daguerreotypes. ROGER was in-kneed, the Witness said, and he must have seen some strong resemblance and something in the manner of the Defendant which reminded him of ROGER TICHBORNE, otherwise he would not have submitted him to any crucial test, which he did in the form of an interrogation. If the Defendant is a vagabond from Wapping, it is a surprising thing that he should have imposed upon his Uncle, and rendered it necessary for him to question him. Mr. HENRY SEYMOUR asked him three questions: first, why he did not visit his sisters; second, whether he remembered General MONDREVILLE; and whether he remembered the Comte DE FERRY. Well, he asked him why he did not visit his sisters. If I had been ROGER TICHBORNE I should have been ashamed to visit them, not in consequence of my wild life in Australia, but because of my campaigns with KATE DOUGHTY.

The LORD CHIEF JUSTICE: She is not a blood relation.

Dr. KENEALY: No, my lord, that is true; but what I want to point out is that, assuming, as I think we ought to do, that Mr. SEYMOUR put these questions with a plain and honest intention of abiding by them, we must conclude that if they had been satisfactorily answered he would have recognised the Defendant. They therefore show that there was nothing in the Defendant's appearance that in Mr. SEYMOUR'S eyes militated against the possibility of his being the real man; or why did he propose the tests? No doubt the Defendant had not moral courage enough to answer the first question as he might have done. He had not moral courage enough to say, "The career I have been pursuing in Australia has not been such as would recommend me in the eyes of your sisters. I felt that if I had intruded myself into the presence of ladies of refinement, I might have received such a rebuff as would have been extremely painful to me." As to the wreck, I submit that his description was such as might have seemed reasonable; and as to General MONDREVILLE, I am surprised that so shrewd a man as Mr. SEYMOUR should not have seen the absurdity of putting a question which an impostor might easily have answered; for his Mother could have told him all about the General.

The LORD CHIEF JUSTICE: Is there any evidence to show that she ever knew General MONDREVILLE?

Dr. KENEALY: Mr. HOPKINS went over to Paris with regard to certain deeds, and would no doubt see him there.

The LORD CHIEF JUSTICE: I believe that was after General MONDREVILLE'S death, which took place in 1844.

Dr. KENEALY: At any rate, whether HOPKINS came into contact with the General or not, neither he nor anyone else coached ROGER with regard to him. Mr. TALBOT is the next member of the Family to whom I will direct your attention. He is the Nephew of Lady DOUGHTY, and the Cousin of Lady RADCLIFFE. He never saw ROGER TICHBORNE after he went into the army, and he does not mention a single feature by which he could distinguish the Defendant from ROGER. He comes before us under very inauspicious circumstances, for he comes to speak against the man who he thinks has defamed his Cousin. I will make no comment upon his evidence. The next Witness is Vicomte DE BRIMONT, but he must have been a very distant connection indeed, for it rests upon the marriage of his grandfather with a Miss PLOWDEN. He only knew ROGER TICHBORNE for six months at Stonyhurst, and he could have seen very little of him. Upon this third question I confess my present ignorance of who the Comte DE FERRY was. I do not know that he was a philosopher.

Mr. Justice MELLOR: It was stated in evidence that he was a philosopher.

Dr. KENEALY: Then I am wrong. He saw very little of ROGER, however. After leaving the College the Witness met ROGER in Dublin with his Father. Viscount DE BRIMONT was another of the persons that the Defendant did not visit either in Paris or London, and though this alone would not bring the Viscount DE BRIMONT to deny that he was ROGER TICHBORNE, still it must be taken to some extent as an ingredient in the Case. He does not mention the features of ROGER TICHBORNE. Now is it not an astounding thing that none of these Witnesses as a rule—neither the Carabineers, the Fathers at the College, nor the members of the Family—give us any evidence in this respect in examination-in-chief? Here we have one Witness after the other put into the box and not asked one single question either by Mr. HAWKINS or Serjeant PARRY on this important point of features. He is asked about ROGER'S height, but he says he could not say whether there was any difference between the Defendant and ROGER in this respect, as he never saw the former standing. We did all we could to elicit information, for we never have been afraid to get information of any sort. The Prosecution, however, thought it was expedient to leave these matters in darkness. The cuttle-fish, it is said, escapes from danger by ejecting a black matter and enveloping itself thereby in a dark cloud, and perhaps the Prosecution have imitated the sagacity of the fish. The Witness says ROGER was in good health, and that he was very narrow chested. Now this is no account of him at all. The Defendant, as you will remember, was asked about this gentleman, whose name he spells "BREMONT," and he says he remembers him and his brother and his sisters, and he mentions their names. The Defendant appears to have had an accurate recollection of the DE BRIMONTS therefore. He was asked whether the DE BRIMONTS were his Mother's family, and the NANGLES his Father's, and he said "Yes." He also said that the DE BRIMONTS were his Cousins once removed, and in cross-examination he was inveigled into saying that the Baron was related to him on his Mother's side. You see how he was led into that observation, and very unfair I shall always look upon it. He is asked, "Now will you swear that Baron DE BRIMONT or the DE BRIMONTS were any relations, directly or indirectly, of your Mother's?" and he replies, "Well, through the PLOWDENS." I presume, Gentlemen, that he meant on the female side.

The LORD CHIEF JUSTICE: But he answered the question in the same way when it was put to him by his own Counsel.

Dr. KENEALY: Still, I suppose he answered it hastily; and it is at any rate clear that he could not have been "coaching" himself up in genealogies. I invite your attention to his statement during this cross-examination: "You will make me say anything if you go on like this." These answers, Gentlemen, are certainly inconsistent with the idea that he had "coached" himself up by reading genealogies, peerages, and family history. You will see again one of those slight proofs which occasionally crop up to show that this man was not coached, and which was conclusive of his carelessness. In re-examination he is asked as to his going to the Abbé DUPANLOUP'S school in Paris, and he said he did not go, but that his Cousin "ROGER" BRIMONT did.

The LORD CHIEF JUSTICE: But CHARLES DE BRIMONT did not go.

Dr. KENEALY: No, my lord. I am only putting it as an example of the reckless way in which the Defendant answers questions. He said ROGER when he meant CHARLES. It only shows that he really does not care what answers he gives. There is another remarkable fact in the cross-examination of the Defendant to which I should like to call attention. He was asked whether he remembered that when he went to Stonyhurst the Superior said to DE BRIMONT, "You must teach your cousin English," whereupon he replied, "Then he must teach me French." For that he was rebuked by the Superior; he was constantly reminded of it, and ROGER was said to have got him into a scrape the first day he was at school. The Defendant said he did not remember it, adding, "You were prompted to that by two or three hundred people." What he meant was, "You have the collective memories of two or three hundred persons concentrated against me in your brief, and you say that I am an impostor because my memory is not so good as all those put together." Well, that appears to me to be an acute answer and a reasonable explanation. When that transaction occurred the Defendant could not speak a word of English, and it is not at all likely that he should remember, because he did not understand, what the Rector said. *Ex uno disce omnes!* * The next Witness is Mr.

* "Whom did you see at the College when you first got there?—There were the ARUNDELLS—EVERARD and JOHN, I think.

"I mean when you first were presented to the Rector—did you see any relation of yours at that time?—I don't remember.

"Were any of your relatives sent for?—I can't recollect.

"Did anything pass between yourself, Mr. JAMES TICHBORNE, and a relative of yours who was sent for?—I have told you before that I did not believe my Father was there. What do you mean by a relative being sent for?

"Sent for from the College?—I can't recollect anything about it.

"Was the conversation repeated between your relative and yourself afterwards?—I can't say.

"Did anything happen between your relatives, the Rector, and yourself on that occasion?—I don't remember.

"Then your memory is a blank on the subject?—Yes, it is.

"Do they fag at Stonyhurst?—No, I believe no. I never fagged anyone. I am under the impression there was no fagging there, but I won't swear to the matter at all. I believe the lay brothers did the work.

"Will you swear that you yourself never fagged?—Yes, I will.

ROBERT MANSFIELD. He is a barrister, connected with the Family by marriage; and he says that he saw ROGER at Bilton Grange for a few days in 1848-9. He gives an extraordinary account of him. He says that at that time he looked like a "wild animal," and that he had a melancholy expression of countenance. He states, however, that when he saw him next he seemed "set up," and very much improved. He adds that he could not pretend to recollect ROGER'S voice, but that he can conscientiously declare that he had never heard such another; and that it was a "gruff, monotonous, and strained voice." He states that his mind had gone through various phases—meaning that he had doubted whether the Defendant might not after all be the man. But he says he borrowed a wig and gown, and came into the Court: after which he had no doubt about him any longer. He says ROGER used to speak a kind of "high-bred lingo between French and English"; whereas he found that the Defendant spoke "pure Wapping." What he meant by a "high-bred lingo" I hardly know.

Mr. SHEPPARD (Juror): The word was "hybrid." (Laughter).

Dr. KENEALY: "Hybrid?" Well, it is printed "high-bred" here.

The LORD CHIEF JUSTICE (much amused): Have the short-hand writers got it "high-bred"?

Dr. KENEALY: Yes, my lord; and I confess I was much puzzled by the word. Mr. MANSFIELD took notes at the Law Institute, and circulated a book of those notes—a most improper thing for any one who was to be called as a Witness. He made some bets of hats on the subject, which is also a thing much to be lamented. The next Witness is Mr. NUNEZ HAYSHAM, and the only ground on which he decided against the Defendant was, that he could pronounce "th." He got the Counsel to put a question so as to get in reply the word "Southampton." ROGER would have said "Soutampton," but the Defendant said "Southampton" as plainly as the Witness himself could do. Such a peculiarity, which, by the way, no other Witness has mentioned, could easily have been removed by twenty minutes practice of English, and I therefore ask you to place no reliance upon it. The next Witness is Lady DORMER, the eldest daughter of Sir JOSEPH TICHBORNE. According to her account she had not seen ROGER more than four or five times before 1848; and she afterwards saw him again in 1851.

The LORD CHIEF JUSTICE: Does she not say he dined with her once prior to his leaving the country?

Dr. KENEALY: She does, I think. When I asked this lady, who seemed to have been so familiar with ROGER TICHBORNE, whether she had been twenty times in his company, she declined to answer, though she would go so far as to say she had seen him twelve times. Now, supposing that I was acting upon the instructions of a Wapping butcher, how do you think I came to ask her whether she could say she had been in his company twenty times?* That is a question that can be more easily put than answered. I accept pretty nearly all her description of ROGER TICHBORNE, except when she says that he had an ugly nose and open nostrils—for those are traits which no other Witness has mentioned. She says that he had a way of raising his eyes when excited, but she had noticed no twitching. As to the nose, you can see from the photograph that it was a very fair one. Lady DORMER also says that he had a bony, ugly hand; and there again she must be wrong. But she used a phrase to which I would call your particular attention as establishing a remarkable identity between ROGER TICHBORNE and the Defendant. She says he spoke with a strong French accent, and that he had rather a mumbling way of speaking, rather indistinct. You have heard this gentleman, and I ask you whether there have not been occasions when he spoke in a mumbling and rather indistinct way. I conceive that to be one of the most remarkable features in the Case.

The FOREMAN: I always thought that your Case was that the Defendant's voice had changed because he had broken his nose in Australia?

Dr. KENEALY: But if there was an original thickness of voice it would be increased by an injury to the nose, by loss of teeth, and by drinking spirits. Probably there is nothing that more alters the voice in a human being than the habit of drinking, as you may have noticed amongst acquaintances of your own.

The LORD CHIEF JUSTICE: The Defendant said he did not drink in Australia.

Dr. KENEALY: He could not get it, I suppose; but directly he came back he drank thirteen pints of whiskey a week. I suppose in Australia it is a difficult thing to get drink.

The LORD CHIEF JUSTICE: Well, I don't know; there are the "sly grog shops." (Laughter).

Dr. KENEALY: If they were a drinking people, they would soon exhaust the supply of those shops.

The LORD CHIEF JUSTICE: That does not matter!

Dr. KENEALY: When he came back to England his habits were something awful. Why, he would drink as much as thirteen pints of spirits in a week!

The FOREMAN: Have you not maintained till now that ROGER TICHBORNE had a soft, mild voice?

Dr. KENEALY: Yes, but there is an indistinctness and a thickness about the Defendant's voice which does not interfere with the mellow sound it has. What I am contending is that the Defendant's voice is soft and mellow, sometimes indistinct, with a kind of mumbling about it. This lady was in Algiers, and came over here for this Trial. She never heard him speak, and never saw him so well, she said, as on the day on which she was examined. She denied that he was ROGER TICHBORNE. Mrs. GREENWOOD is the next member of the Family who is called. She is the widow of Colonel WILLIAM GREENWOOD. Her description of ROGER TICHBORNE tallies very much with the appearance of the Defendant. "He was very slight, narrow-chested, and had falling shoulders. He was long and narrow in every way, in face, nose, and chin, and was pale and sallow, and had dark hair, grey blue eyes"—exactly the eye this Defendant has—"a melancholy expression on his face, his forehead falling back. His arms were long, and he was a very wiry-looking man." We never think of calling a sickly, almost dying, man, a "wiry" one. That term is usually associated with a person in good health; but she explains it further, only saying he looked like a man hung on wires. (Laughter.) That was her notion of a "wiry" man. This Witness speaks to seeing him wheeling wheelbarrows, and she must have seen his arms bare, but she does not pretend to say that she saw tattoo marks on either of them. She says that the hair of the Defendant appeared much lighter than ROGER'S, and also that when she first saw the former she could hardly believe it possible that a man with such light and curling hair and whiskers could come and say he was TICHBORNE. She said, further, that his hair was darker and not so thick when she was cross-examined as it was when she saw him at the Law Institution. ROGER TICHBORNE, she said, could look you in the face composedly, and his features never changed in conversation. But she must be wrong here, for many persons distinctly declare that whenever he was excited in conversation he used to raise his eyebrows in a twitching manner. She said she heard the Defendant at the Law Institution trying to speak with a French accent, but it was not like ROGER. In further cross-examination, she said that she had stated somewhere that the Defendant spoke with a French accent sometimes, and that there were occasions when his voice resembled ROGER'S. The next person I will call your attention to is THOMAS SANSOM, who was butler to Lady DOUGHTY, and who said he knew ROGER very well. I think this Witness was a person who came under the auspices of WHICHER. In answer to my questions, he said ROGER TICHBORNE was not in-kneed, had straight legs and large hands, not so fat as the Defendant's, but whether they were smaller or not he could not say. He was positive ROGER TICHBORNE had not a twitch of the eyebrows—a peculiarity which several Witnesses said ROGER TICHBORNE had. I now pass to Colonel GEORGE GREENWOOD. He is a Witness who said in effect that he saw nothing in the Defendant's appearance which would prevent him from being ROGER TICHBORNE. He admitted with great frankness that at the Law Institution he had fully made up his mind that the Defendant was an impostor, that he had talked the matter over with members of the Family and they were all harmonious on the subject. Yet his description of ROGER TICHBORNE differs in some respects from that of most of the military Witnesses. He describes him as having been "a thin young man with a narrow face, rather a sallow complexion, dark straight hair, rather a narrow chest, sloping shoulders, and about 5ft. 8in. or 9in. in height." He says, further, that on the 21st August, 1847, ROGER was weighed, and that he was then 8st. 12lb., which I submit to you was not a bad weight for a youth between eighteen and nineteen, and just from Stonyhurst where he looked, according to Mr. MANNOCK, "as only half fed." There is nothing in Colonel GREENWOOD'S description of ROGER TICHBORNE, as I have said, which would render it impossible for the Defendant to be he. This was another of those gentlemen with whom the Defendant did not renew his acquaintance at the Law Institution. He says the Defendant nearly touched him in passing upstairs, but he (Defendant) took no notice of him. He was asked, "Did he make any sign of recognition?" and he answered, "No." Again, I submit when Colonel GREENWOOD was pointed out to him he would have gone up to him, and endeavoured to produce the same effect upon him as he has been said to have done upon others, if he had been an impostor. The fact of the case was, however, that he did know these Witnesses, and therefore he would not speak to them.

Gentlemen, I have alluded to BYRON and one of his eccentric actions. I do not mean to represent this gentleman to you as a man of genius like him; but we are all of us somewhat akin in our moods; and what a man of genius does may often be

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"Do you recollect whether your relative, your Cousin CHARLES DE BRIMONT, was sent for by the Superior, and told that he was to teach you English, and that he replied, 'Then he must teach me French'; that he was reproved for answering so sharply, and that you reminded him afterwards that you had got him into a scrape the very first day you went there?—Do you expect me to remember all that?

"Yes. Do you remember it?—No, I do not."

* What actually occurred was this. Dr. KENEALY during the examination of Lady DORMER, observing that she professed great knowledge of him, stooped down to his Client, and asked him, "Did she know you well?" The Defendant at once answered, "No, very little." Dr. KENEALY said, "About how often do you think you and she met?" The immediate reply was, "Not a dozen times." Lady D. it will be seen corroborated this fact. How could a Wapping butcher know this?

imitated by one who has no pretensions to that great but often doubtful possession. CARLYLE speaks of the wild outbursts of BYRON, SHELLEY, and FREDERICK SCHLEGEL, "stupified in fearful loneliness;" and this Defendant must often have felt, in the wretched slavery to which he was consigned both at Stonyhurst and in the army, the power of that sentiment, which the Chelsea philosopher thus describes: "Great is the moment when tidings of Freedom reach us; when the long-enthralled soul, from amid its chains and squalid stagnancy, arises, were it only in blindness and bewilderment, and swears by Him that made it that it will be *Free!* Free? Understand that well; it is the deep commandment, dimmer or clearer, of our whole being, to be *Free*. Freedom is the one purport, wisely aimed at, or unwisely, of all man's struggles, toilings and sufferings on the earth." No wonder can there be, if when he broke loose, he burst from all restraint; and plunged into such delusive hunts after happiness as those in which we find him mingled; and which if they did not bring content, at all events were rewarded by health and strength.

[The Court then adjourned for luncheon]

On its re-assembling,

Dr. KENEALY continued: I was pointing out to you how unfortunate it was the Defendant should have excited Colonel GEORGE GREENWOOD against him—or, at all events, raised some feeling in his mind—by not recognising that gentlemen at the Law Institution. I come next to the interview which took place between them on the railway. It is singular so many of those who knew ROGER TICHBORNE have been unable for some time to make up their minds as to whether this man is he or not. Colonel GEORGE GREENWOOD seems to have had very serious doubts, I submit, or he would never have entered that railway carriage on the invitation of Colonel LUSHINGTON. The Defendant, after remarking to Colonel GREENWOOD, "You don't seem to recognise me," treated him in such a supercilious way that Colonel GREENWOOD returned to his own party, who were in a different carriage. Probably he thought Colonel GREENWOOD had been got hold of by Lady RADCLIFFE, and talked over, and there is no doubt we are all very weak when anyone gets hold of our weak points.

Mr. TAYLOR (Juror): *What is yours?*

Dr. KENEALY: I would not tell you if I knew. (Laughter.) Colonel GREENWOOD, when the Defendant said that, got up and left the carriage, but afterwards the Defendant got Colonel LUSHINGTON to go to him. He said, in effect, in a very proper and gentlemanly spirit, that if Colonel GREENWOOD would come back he would answer any questions he might ask. That shows that he is not afraid to be cross-questioned. They went on in the train, and Colonel GREENWOOD asked him if he could remember something that had passed between them, but he could not. Colonel GREENWOOD says the Defendant asked him some questions about things that had no existence. Eventually the

THOMAS CARLYLE.

Defendant said, "Did you not hide your coat in a hedge that night, going from Winchester to London?" The first part is true, but it did not happen to be that journey he spoke of. The whole of the testimony given indicates a bona fides on the part of the Defendant, and no fear that he could be injured by any question of the Colonel's. When asked about the voice, Colonel GREENWOOD says, "I think there is no resemblance." It is put under the control of that "I think." Colonel GREENWOOD asked the Defendant who made ROGER TICHBORNE'S first hunting coat? He thought for a bit, and then said, "It was not made for me; it was given me by Mr. MARKS." The Defendant's memory may be wrong as to who gave him the hunting coat, and yet it may be right upon the main point that it was not made for him. If the Defendant recollected that this coat was made a present to him by somebody, it is most remarkable. ARTHUR ORTON, with all the coaching he could possibly have from CARTER and M'CANN, could by no means get hold of this important fact that the hunting coat was given to ROGER TICHBORNE. It was a thing of which they knew nothing. It seems to me to be one of those wonderful things like Major FRASER'S snuff-box. You may ransack and cudgel your brains, and I defy you to come to any solution of it. We know that the hunting coat was given to him by Colonel GREENWOOD, but in his reckless way he says it was given him by Mr. MARKS. I come next to a very important member of the Family—Lady RADCLIFFE, but I do not mean in my comments to enter upon the grand point of controversy between her and the Defendant, because I reserve that for the third and concluding part of my address to you, but I will comment upon some important points in her evidence. There are one or two things in which Lady RADCLIFFE *is mistaken*, and one of the first of these is the matter about the uniform. It is now perfectly clear that ROGER TICHBORNE wore his uniform for the first time at Knoyle. Lady RADCLIFFE seems to be under the impression that the first time he wore it was at dinner at Tichborne. I will not say she is anything more than mistaken. She produces a specimen of hair which was presented to her by ROGER TICHBORNE. I ask you to look at this hair, and say if it is not the same as the Defendant's. You will see the slight fine delicate tinge of red that appears in it. [*Hair handed to the Jury.*] As to anything like a tinge of black that one of the Family speaks of, I can only say that I cannot see it. That is what I call dark-brown hair, and, if you notice, there is a mark upon the paper as if the hair had been saturated with oil.

The LORD CHIEF JUSTICE: Is there not always a certain amount of animal matter in the hair of young persons that would produce that?

Dr. KENEALY: I dare say it would to some extent.

Mr. Justice LUSH: Especially the hair of a young person.

Dr. KENEALY: He was not very young at the time. There is another mistake this lady makes, and that is in reference to her

Father never having driven or ridden a white pony, for in that lithograph you have seen he is represented as on a white pony.

The LORD CHIEF JUSTICE: Is it a pony or a horse?

Dr. KENEALY: Oh, my lord, really I cannot tell. That is a refinement that never occurred to me.

The LORD CHIEF JUSTICE: It seems from the lithograph to be a horse of at least fifteen hands. That would probably account for her forgetting it.

Dr. KENEALY: I only treat it as a thing she seems to have forgotten.

[The Jury at this point requested to be allowed an opportunity of comparing the different locks of hair, and it was of course granted.]

Dr. KENEALY: Then this lady confesses that there was something about the voice of the Defendant that put her in mind of ROGER; and if this is what is said by his own Cousin, the lady who above all others must have known every tone of ROGER'S voice, what are we to think of the testimony of people who swear there is no resemblance whatever in the voice? She and her husband could not come to a final conclusion until they had seen him a second time; and this is strong evidence that there was something they recognised in him. I don't know whether you are acquainted with a beautiful poem of Mrs. NORTON'S which commences—

"When first beloved in bygone years,"

and represents an old man recalling everything about his wife of early years by hearing the voice to which he was then wont to listen. The voice seems to be one of the unalterable characteristics of the human body. I don't think this lady gives any further description of him; and the other matter, as I have said, I shall not enter on now. It is very much to be regretted that this lady and her husband, Sir PERCIVAL RADCLIFFE, should have had any conversation with CHATILLON and D'ARANZA, and why they had I am unable to say. And here comes a peculiar piece of evidence as to identity. Lady RADCLIFFE says she does not recollect ever noticing any twitch in ROGER, and in reply to me she says she knows she has a twitch sometimes, but never heard any person say it was like ROGER'S. You, Gentlemen, saw the lady, and must form your own opinions as to whether or not she has a twitch such as the Defendant has and my Witnesses say ROGER had. I see that Lady RADCLIFFE also says there might be a sort of look of ROGER about Defendant's brow, and this is likewise important evidence on my side. That is all I will say just now about Lady RADCLIFFE. She is followed by her husband, Sir PERCIVAL. He saw ROGER at Burton Constable in 1848, as he thinks, when they were both on a visit to Sir CLIFFORD CONSTABLE. He says, "I was about 22 or 23 years old then, and ROGER was about 19. We were together day by day constantly, dining together at the same table." He does not mention, nor is he asked by the Prosecution to mention, one single feature of ROGER TICHBORNE. Of course if any man in the world has a strong bias against, and hatred and horror of, the Defendant, Sir JOSEPH RADCLIFFE is the man. He says he has no recollection of ROGER'S features.

The LORD CHIEF JUSTICE: Does he not say that he has not so distinct a recollection that he could bring himself to speak of them?

Dr. KENEALY: Probably.

The LORD CHIEF JUSTICE: I think he says it is so many years since he saw him, and then only for a fortnight, that he does not remember him sufficiently.

Dr. KENEALY: The grounds I will not enter into, because a great many who have known less of him have spoken of him. Sir JOSEPH RADCLIFFE is in the prime of life and intellect, and if he cannot remember ROGER TICHBORNE, is it surprising that the Defendant cannot remember many persons and things? I next come to another lady—a very important person in this Case—I mean Lady DOUGHTY. Her deposition was read. She was examined and cross-examined under most unfavourable circumstances. She was an old lady and was dying, and great allowance must be made for her; for she would not have been a woman if she had not had a prejudice against the Defendant, in consequence of what he had said concerning her daughter. She says, "I remember he had an issue at the time; it was open when he came, it was kept open by two peas. There was only one sore. The peas were taken out, and it was left to close." Now I think that must be a mistake, because Mrs. NANGLE, who certainly seems to have seen more of this child, says distinctly there was only one pea.

The LORD CHIEF JUSTICE: There is a difference of three years in the time they speak of. Mrs. NANGLE saw the child when he was six, Lady DOUGHTY when he was nine.

Dr. KENEALY: My remark on this is, that if these two ladies are at variance on this matter we ought not to deal very hardly with such a man as this who blunders about a seton or about an issue, and whose attention was distinctly called to a seton.

The LORD CHIEF JUSTICE: The Defendant had himself called it a seton in his examination-in-chief.

Dr. KENEALY: Then the Attorney-General does not repudiate that, but continues to ask him about a seton.

The LORD CHIEF JUSTICE: He did not ask him about a seton. The Defendant had spoken of it before, and with this striking additional expression, that he represented it as existing when he came to his Uncle's in 1845.

Dr. KENEALY: The way in which the Attorney-General puts it is as if his instructions were that it was a seton. Well, this lady goes on to say, "He is decidedly not Sir ROGER TICHBORNE; he is not in the least like him, in my mind." That must be wrong, for he must be like him in some respects. She says, "The Defendant is not the same height as ROGER." ROGER was 5 feet 8 and a half when he joined the Carabineers; this man is 5 feet 9; the difference is only half-an-inch. She says, "ROGER had a long neck." Some of the Witnesses say he had a short, some that he had a long, and some that he had a medium, neck; it is quite absurd. "ROGER'S knuckles," she says, "were thick; he had a bony hand; his hand is not that of the Defendant. ROGER'S eyes were dark blue, and he had dark eyelashes." I do not think there is anything further on the subject of personal identity in Lady DOUGHTY'S evidence, and so I pass from her to Mrs. NANGLE. Mrs. NANGLE is another daughter of Sir HENRY TICHBORNE, and was the cousin of ROGER. She knew him from the time he was about five years old. She says, "He had long fingers and marked bony knuckles, but there was nothing peculiar about his hand. He had long straight brown hair. He had fine eyes, grey blue, black lashes, and very marked eyebrows. I have seen the Defendant and the twitching he has in his eyebrows. ROGER had nothing whatever of that sort." Then she says, "he was 5 feet 8½ inches or 5 feet 9, very slight, pigeon-breasted, very low shoulders, very slim, and thin altogether. He had a soft voice." That description, I say, tallies in several particulars with the Defendant. The Witness says the Defendant does not bear the slightest resemblance to ROGER, and she says ROGER had not any twitch about the eyebrows. Now, Gentlemen, I invite you to believe that this lady has not come forward with an impartial mind. She was asked if she had already made up her mind that the Defendant was not ROGER before she saw him, and she said, "No. We knew perfectly well, the instant we saw the person, whether he was ROGER or not." I submit to you that this lady, at all events, had made up her mind. We come next to Miss CAROLINE NANGLE, and I think without adopting to their full extent the words of Lord BROUGHAM, yet they are applicable to Miss NANGLE. Lord BROUGHAM says, "All persons who have been accustomed to see Witnesses examined in a Court of Justice know that those who are stating falsehoods are extremely apt to give flippant and impertinent answers." I am not going to say Miss CAROLINE NANGLE is knowingly telling falsehoods, but it is certain that she comes under the indication given by Lord BROUGHAM of giving "flippant and impertinent answers." She says she knew ROGER from the time that he was four years old. She says that ROGER was a polished and courteous young man. He was 5 feet 8 inches or 5 feet 9 inches in height, with great length between the point of the ear and chin. Fine eyes, with very arched eyebrows. Like his mother; not in the least like the TICHBORNES. This lady says that his hair was getting darker every day. This, I submit, is nonsense. She is asked further about the description of ROGER, and she says that his manners were like those of a Frenchman. There was no twitching of the eyebrows. She does mention several features, which, I submit to you, are features like those of the Defendant. The next person to whom I call your attention is Mr. WM. HENRY NANGLE. This gentleman, who is a major in the army, knew ROGER in Paris for nine or ten years, and last saw him at Bath. He called on the Defendant, and tried him with questions. The answer to these either satisfied him or did not. If they had satisfied him he would not have been a Witness against the Defendant. Why, then, did he make his second visit? It must either have been to satisfy himself, or to furnish himself with material for giving evidence. If he was satisfied by the first interview that he was not ROGER TICHBORNE, and called a second time merely to abuse his hospitality and have a lark, he would be a man unworthy of belief by any body of honourable men. Let us see the way in which he acted. First of all, he tells us he had great difficulty in getting in—the man who answered the door opening it only two inches, and asking him what he wanted. I don't know whether the Defendant was expecting a visit from bailiffs, or from some of the people who were put on him by the Family; but it is evident some instructions had been given to the servant as to who were admitted. Mr. NANGLE pushed the door open and, going in, said, "I want to see my cousin." The Defendant evidently suspected him of being a person coming under false colours, and was, apparently, not much inclined to see him. However, he did see him, and, according to the Witness, did not recognise him. He asked him whether he was HENRY or WALTER, and what I want to put to you is how he could know that these were the names of the NANGLES. Major NANGLE tells us he said something to the Defendant in French, and he did not seem to understand it. On this question I should have pointed out before that if ARTHUR ORTON made any enquiry at all about ROGER TICHBORNE, he would have found that he had been brought up in France, and was a French scholar, and that would have been sufficient to convince him there was no use his attempting to personate him. This Major NANGLE, I say, hoisted false colours; for he says he saw at once the Defendant was not ROGER TICHBORNE, and his duty was plainly to at once rise and leave the house. I would not have condescended to partake of the hospitality of a man I knew to be an impostor and a scoundrel; but Major NANGLE seems to have thought differently. It is said by the Prosecution

the Defendant was in the habit of pumping all the people he came across, and then using what he got from them as proof of his identity; but we have seen that his habit to those most likely to be useful to him has been supercilious in the extreme. Major NANGLE says he did not seem to take the least notice of him. An impostor would have conciliated him, and sucked out of him everything he knew; but this man treated him with marked contempt. This is exactly what he has been doing all through. He has been quite consistent in this matter from the time when he showed himself to fly in the face even of his Mother, and told her he would not come home at all. Never has he sought to gain a friend or to conciliate any person, or appeared to be that which he was not. He might have had shoals of priests on his side if he had only chosen to put on the false garb of a true Roman Catholic; but they knew that he had done nothing of the kind. The next Witness is Captain WALTER NANGLE, who saw ROGER TICHBORNE in 1844 and 1849, but not after he entered the army. His description, I submit, is upon the whole a rather fair and accurate description of the Defendant; and I think you will bear in mind that it is by identity that you will decide this Case. It is all very well for a number of people to come here and say he is not ROGER, but if the features of identity between ROGER and the Defendant are overpoweringly strong, you will have to find that he is ROGER TICHBORNE. This Witness says the Defendant differs from ROGER in every respect—"ROGER'S hair was nearly black and straight; and he had a fine, flat, open forehead." Miss NANGLE said it was narrow. He states that ROGER had a pear-shaped face, broad at the top and thin below. LOUIS PHILIPPE had a pear-shaped face, Gentlemen, and I leave it to you to say whether that is a description of the Defendant's face. I should call it oval. "Very fine eyebrows." If Captain NANGLE means thin and pencilled eyebrows that must be a clear mistake, as is evident from all the other testimony. "Very good, charming eyes, and a very pleasant smile." Then breaks out another characteristic of this Defendant. "And shoulders like a champagne bottle in shape." This is the account given of ROGER TICHBORNE by Captain NANGLE, an account which I ask you to take in my favour, because all the salient points exist in this Defendant. Mrs. TOWNLEY, who comes next, was another of the daughters of the late Sir HENRY TICHBORNE. She knew ROGER when he was four years old, and saw him just before he went to America. This lady I must describe as a strong partisan. She had some bets on the former Trial, and has not been paid them all. I suppose whether she will get paid depends on the result.

The LORD CHIEF JUSTICE: Oh, no.

Dr. KENEALY: Even Mr. Serjeant PARRY, for some reason or other, gets out of her that one of her bets was with Mr. GUILDFORD ONSLOW, and that he had not paid. I suppose that one will be settled by this Trial.

The LORD CHIEF JUSTICE: Oh, no; the bets were on the last Case, and were off when there was no verdict.

Dr. KENEALY: Unless the bet was that he was TICHBORNE or that he was ORTON.

The LORD CHIEF JUSTICE: Yes; of course.

Dr. KENEALY: This Trial will decide those, and I hope that it will be in my favour, and that we will get the benefit of those bets. Well, this was one of the ladies who went to Croydon to have an interview with the Defendant. She says the Defendant was a great deal taller than ROGER was. His hair is quite a different colour.. ROGER had beautiful blue eyes and dark eyebrows. The eyes were like his Mother's. That is the whole of the description she gives of ROGER TICHBORNE, and I do not think I am much damaged by it. Mrs. WASHINGTON HIBBERT, the third daughter of Sir HENRY TICHBORNE, was the next Witness. She saw ROGER soon after he was born, again in 1845, and afterwards knew him before he went abroad. "He was a young man about five feet eight or nine, very thin and sallow; he had sloping shoulders, a very good eye, greyish blue, and a very marked eyebrow." All that is the same as this Defendant. This lady saw the Defendant in Chancery-lane, and she pronounces against him very authoritatively. "He is neither the shape, nor has he the voice, nor any feature like ROGER TICHBORNE in any way." And she, too, has fallen into *the delusion* that his hair is getting darker and darker every day. No two persons, she says, could be more diverse than the Defendant and ROGER TICHBORNE. She reminds one of the words of DESDEMONA:—Methinks the lady doth protest too much." She says she never noticed any twitch in his eyebrow, and on re-examination she describes his eyes as being of a very soft blue with a wide expression.

The LORD CHIEF JUSTICE: Should it not be wild? I do not know the meaning of "a wide expression."

Dr. KENEALY: He opened them and took a wide view.

Mr. Justice LUSH: She said "wild expression."

Dr. KENEALY: There is no wild expression in the Chili photograph. Mr. GOSFORD comes next, but I do not wish to enter on Mr. GOSFORD'S evidence to-day on the subject of personal identity, but I will call your attention to the evidence of another member of the Family, Mr. GERALD FITZGERALD. He was on a visit at Tichborne in July, 1849, for eight or ten days, and there he met ROGER for the first and last time. He says, "I cannot remember ROGER'S width, because we were measured together." I should have thought their being measured together was a good reason for his remembering it, but, on the contrary, he says he cannot remember it. He describes him as being a very slim young man, which does not help us very much. This Witness speaks of him being loosely made, and yet one of my Witnesses was greatly laughed at for saying his skin was loose.

The LORD CHIEF JUSTICE: You don't mean they are the same?

Dr. KENEALY: I think so.

The LORD CHIEF JUSTICE: Oh, no. Your Witness described the skin as loose, and gave us the idea that he was like a man who had been fat, and had more skin than he could fill up.

Dr. KENEALY: Surely that was not what he meant.

The LORD CHIEF JUSTICE: FALSTAFF'S skin, after a certain operation, hung loosely about him.

Dr. KENEALY: But that could not have been said of ROGER TICHBORNE. I understood him to mean he was loosely made.

The LORD CHIEF JUSTICE: It may be so, but I did not understand it in that way.

Mr. Justice LUSH: He described him as having such a skin as would allow of a large development.

A JUROR: That is what the Witness said.

Dr. KENEALY: That is evidently absurd, and I can only suppose he meant something else. This Witness, Mr. FITZGERALD, does not call to mind a single feature of ROGER TICHBORNE, and never thought it worth while to have a conversation with the Defendant, but decides in an off-hand way, for you and for the country, that he is an impostor.

Mr. TAYLOR (Juror): He did not believe his story.

Dr. KENEALY: Sir, when I am reminded, as I am now by you, of the various odd things that surround this man, like a cloak, I can only answer them by referring to that grotesque and motley thing, Human Nature itself. What is there, asks CICERO, so absurd as not to have been propounded by philosophers? * It produces everlastingly, wild men, and wild acts, and evil relations. What is there, ask I, so silly as not to have been done by man? Look at the closing years of the great Emperor CHARLES the Fifth. He gives up the Kingdom of Naples, and the domains of the House of Burgundy. He lays aside the Crown of Spain: he renounces the Imperial Diadem itself, and retires to a lonely monastery in the mountains. There the once great Emperor passes his days, without pomp or state or courtiers. He orders his funeral obsequies to be performed. He attends his own imaginary burial, and joins in the *Dies Ira* hymn for the departed. He steals back to his cell; and in three weeks lies in the grave, which he had in fancy entered during life. And I suppose Mr. FITZGERALD does not believe that these things ever happened.

[The Court adjourned at four o'clock.]

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*A TICHBORNE IN THE LAST CENTURY.

We have been favoured by two gentlemen of Hull with the following extract from the *Yorkshire Magazine* for April, 1786, which contains an account of an unhappy man, who, like JAMES ANNESLEY and ROGER TICHBORNE, lost his inheritance under adverse circumstances. The sudden death of Mr. SWAN, the Claimant, is in curious analogy to the sudden death of Lady TICHBORNE, who Sir ROGER always averred had been poisoned, or otherwise made away with, to prevent her evidence being laid before the Jury. Upon this we pronounce no opinion; there is quite enough villainy in the TICHBORNE Case, without adding to it any further terrible surmise. The readers of the *Wandering Jew* do not require to be told to what awful crimes the Jesuits resort when vast property is in question; and as Mr. SWAN was "the only surviving male heir," it is not without the range of possibility that he may have been made away with, to stop all further proceedings. We know how Lord ANNESLEY sought to destroy his poor nephew.

"SUDDEN DEATH OF MR. SWAN, MARCH, 1786.

"March 10: WILLIAM SWAN, Esq., was found dead in his bed at an obscure lodging in London. He was the only surviving male heir of the late THOMAS SWAN, Esq., Alderman and Mayor of Hull, who left estates to the amount of £20,000 per annum, and for which the above unfortunate gentleman had been trying (in vain) for above twenty years to recover. The history of this heir is no less remarkable than that of his father, who, when nine years of age (to disinherit him), was trepanned from the house of his father (RICHARD SWAN, Esq., of Benwell Hall, near Newcastle), and put on board the New Britannia brig, was wrecked on the rocks of Scilly with Sir CLOUDSLEY SHOVEL'S fleet, and was afterwards taken prisoner by an Algerine vessel, and sold for a slave; but, after four years' imprisonment, he was set at liberty by the redeeming friars. After this he was again shipwrecked, was carried and sold for a slave to a planter at South Carolina, where he suffered almost every human woe. He returned again to England, after a banishment of about twenty years, in 1726, and was identified by one Mrs. GOFTON, of Newcastle, his nurse, and THOMAS CHANCE, who had been his father's footman. He directly laid claim to the estates of Alderman SWAN; but having neither money nor friends living to assist him, all his efforts proved abortive. After this he settled at an obscure village near Hull, called North Dalton, where he married one JANE COLE, by whom he had one son, the above unfortunate WILLIAM SWAN. He afterwards died of a broken heart at the bove village, in 1735."

ONE HUNDRED AND FIFTY-SECOND DAY.——TUESDAY, JANUARY 6TH, 1874.

Dr. KENEALY resumed his address. He said: May it please your lordship, Gentlemen of the Jury, I now come to Mr. GOSFORD, to whom I referred on a former occasion, and I confine myself, at present, to the extraordinary evidence he gave as to personal identity. I shall have occasion to refer to him again on another branch of the Case. You will bear in mind the animus which GOSFORD exhibited, and which was perfectly intelligible when you remember that he is likely to fare much better from the present people than he could possibly hope to do after the Defendant has received—as I confidently believe he will—an acquittal at your hands, and has been enabled to pay off the costs in the Court of Common Pleas, and to recover his estates. GOSFORD was rather an advocate than a mere Witness in the witness-box. He did not so much answer as argue, and he sought to argue you, Gentlemen, by the same process he had used towards himself, into the belief that this gentleman is not ROGER TICHBORNE. He seemed rather to have reasoned himself into the idea that the Defendant was not ROGER TICHBORNE than to have been convinced by ocular demonstration. "Construction on the evidence" was one of his phrases.

The LORD CHIEF JUSTICE: *Did he not mean the evidence before him in the person of the Defendant?* He goes on to say, "I have ROGER TICHBORNE distinctly before my mind from the day when he left England, and when I look at this man"—the Defendant before him—"I see nothing but contrast." He seems to be comparing the two men.

Dr. KENEALY: He was more than once told that his conclusions were merely matter of opinion, but he was not to be stopped, and his negation was mainly founded on dissimilarity of appearance and the mistakes made by the Defendant at the Law Institution. He goes upon demeanour and conduct, and he is obliged to satisfy what remains of his conscience in that way. Once he apologised, on being interrupted by the Lord Chief Justice, for exhibiting warmth, and was told by the Court, "You are anticipating the functions of the Jury." He said, "My lord, I did not mean to do that in the slightest degree. I have perfect faith in them." Gentlemen, it must be a great compliment to you to hear that Mr. GOSFORD has perfect faith in you. See, now, how the violent partisan breaks out in GOSFORD. The Defendant's dialect, he said, was low and vulgar. ROGER'S was that of a gentleman and a Frenchman, and, he added, "there is no more resemblance between this man and ROGER than between me and any squeaking girl who may be in this Court." He said ROGER was particularly narrow-chested, but Mr. GREENWOOD, the tailor, proved quite the contrary. GOSFORD said that ROGER was "narrow-chested—as narrow as could be." I forget what the real measurement was.

The LORD CHIEF JUSTICE: Thirty-six inches.

Dr. KENEALY: Exaggerations of this kind defeat themselves, and Mr. GOSFORD has evidently an exaggerating mind. He gives an opinion worthy of the President of the College of Surgeons: "It is physically impossible that the frame of ROGER TICHBORNE could have developed into that size. His height also is a couple of inches higher than ROGER'S." Now, we know that ROGER'S height was 5ft. 8½in. when he entered the army, and that the Defendant's height is 5ft. 9in., and yet, from want of memory or from exaggeration GOSFORD states, after twisting and turning the matter in his mind for a couple of years, that the Defendant is two inches higher than ROGER was. But GOSFORD admitted that the upper part of the Defendant's face bore a slight resemblance to ROGER. Gentlemen, it is a most remarkable thing that so many people say there is a resemblance in the upper part of the face. Then GOSFORD goes on: "The hair on the Defendant's forehead is a fair imitation of ROGER'S." Why should he have presumed to say it was an imitation? It was not, for we know ROGER had an overhanging lock, which ladies call a love-lock, which he was constantly throwing back.

The LORD CHIEF JUSTICE: After he joined the army?

Dr. KENEALY: I think so, my lord.

The LORD CHIEF JUSTICE: The hair is cut short in the army.

Dr. KENEALY: At the back, yes.

The LORD CHIEF JUSTICE: And the front also.

Dr. KENEALY: I fancy some of the soldiers or officers spoke of his habit of throwing back the hair. GOSFORD next spoke of the Defendant's protruding eye as being quite unlike ROGER'S eyes, but several Witnesses have spoken of ROGER'S large, and to a certain extent, protruding eye. It is worthy of remark that after all these years GOSFORD does not venture to say that the Defendant's eyebrows, mouth, or chin are not like those of ROGER TICHBORNE. His animus is shown by one thing he said. "I asked the Defendant, out of malice, did he know CULLINGTON?"—a man he had never seen. Then you will remember his sly effort to measure himself with the Defendant at the railway-station—an instance of almost feline cunning, which I, for one, do not like. Another circumstance which you will will bear in mind is that GOSFORD made notes at Croydon in a pocket-book, and communicated them to DOBINSON or CULLINGTON. These things do not indicate an honest mind. Next we have Mrs. GOSFORD, who knew ROGER from 1848 to 1852. She and her husband must have discussed the matter of personal identity together. She says she had a perfect recollection of him; that he was about the middle height, very slim, always in motion almost, very active. Nothing can be more indefinite. But one thing that struck her eye is remarkable: "Always in motion almost"; and I venture to say, during the nine months we have been in this Court you never saw the Defendant in repose. He is always in motion; writing, cutting out foolish flowers, always doing something, never in repose. "Is he," Mrs. GOSFORD was asked, "ROGER TICHBORNE whom you and your husband knew?" "Not the least like him" was the reply, pronounced in a dictatorial way. But how many Witnesses have sworn that he is? And was not Lady RADCLIFFE herself in doubt? And would his Mother adopt one "not in the least like" her dear, loved Son? The Witness said ROGER'S hair was long and lanky, without a wave in it—all quite consistent with its becoming what the Defendant's is now. She never saw any movement in ROGER'S eyebrow any more than in anyone else, and that although she saw him in 1852 when he was at Tichborne for the last time, and when he must have had the twitch. Of what earthly value is testimony like that? It is based upon imperfect recollection, and is therefore valueless. An arduous attempt was made by Mr. Justice MELLOR to get something precise from this Witness, and she said ROGER'S hair was darker than the Defendant's, adding, "I think," and she too, like other Witnesses, ventured to say the Defendant's hair is darker now than it was when he was examined before Mr. ROUPELL—an assertion which has been altogether set aside. I must ask you, Gentlemen, to come to the conclusion that Mrs. GOSFORD did not take any accurate notice of ROGER, and has no well-founded recollection of him. Next she dwelt on what she called the Defendant's gruff voice and ungrammatical language and the absence of a foreign accent, but on these subjects you will remember the evidence given by other Witnesses for the Prosecution. I ought to have drawn your attention to a remarkable phrase of GOSFORD'S, "ROGER was always scribbling." For the last nine months you have seen the gentleman below me doing little else than scribbling; and Miss BRAINE said his hands were always in motion. It is worthy of your serious consideration that these characteristics of ROGER still continue, and have always been evidenced by the Defendant. Mrs. WHITGRAVE was the next Witness. She was on a visit at Sir EDWARD DOUGHTY'S while ROGER was there about 1852. She said that ROGER'S walk was "languid," that "his eyebrows were rather harsh," and that "he had long eyelashes and very expressive eyes." Now, I say you cannot have helped seeing that the Defendant's eyebrows are arched, and that his eyes are most expressive. There was, she says, "a little movement about his eyebrows sometimes when he was a little animated," and his eyes were "melancholy-looking." Here, again, we have remarkable characteristics of ROGER and the Defendant in common. "He had," the Witness says, "dreamy blue eyes, with a great deal of expression in them." You will say whether this description will not answer for the Defendant. ROGER had, she said, dark brown hair. "His manners were pleasant, he was very courteous, very amiable, always a gentleman." She saw very little of him, and does not even remember whether he was in-kneed: but what she does remember is important. Could all these features of resemblance, I ask, concentrate in the Defendant if he were not ROGER TICHBORNE? Most wonderful of all, we have the lady corroborating the evidence of Lady DORMER about indistinctness in ROGER'S voice at times. "I often lost part of what he said." Gentlemen, it takes away one's breath to find mention made of all these points of resemblance. I cannot conceive anyone taking all these matters into his mind as in a picture, and saying that the Defendant is not ROGER TICHBORNE. But after all, the Witness, when asked "Is the Defendant ROGER?" pronounces the grand ukase, "Impossible"—a declaration in which after what she had herself said leading to a contrary opinion, you will not concur. I now come to Miss WELD. This is the young lady who came up dressed in conventual costume. She saw ROGER TICHBORNE in 1851 and 1852, while on a visit there. One would expect from a young lady of her intelligence a perfect description of ROGER, otherwise why was the Court burdened with her evidence? But the Prosecution would seem to think that numbers will win, and you know that the conventual costume is very attractive to the sight. Like skilful managers, the Prosecution know what is taking to the eye. This lady's evidence threw no light on the Case, but she spoke of his indistinctness of speech. It was left for me to get out what she really knew of him. He had, she said, arched eyebrows and dark hair—almost black. She has heard so many persons—so many priests, I daresay—stating that, that she adopted it; but such evidence is put aside by the production of the lock of the undoubted ROGER'S hair which you have before you. Miss WELD did not notice his walk very much, but said he walked like a soldier—one who had been drilled. She could not speak as to his being in-kneed or as to the twitch; yet she is positive the Defendant is not ROGER. Has she not been talked into this?

"Mr. So-and-so tells me so, the Rev. So-and-so tells me so, Lord So-and-so tells me so—it must be so." Of what value, I again ask, is her evidence?

The FOREMAN: It was you who challenged her production.

The LORD CHIEF JUSTICE: *I believe she was called principally as to the tattoo marks.*

Mr. HAWKINS: Your lordship suggested, on her name being mentioned, that she should be called. There was some talk as to the difficulty of getting her out of a convent; but your lordship said a little piece of paper from this Court would open the gate of any institution in the kingdom.

Dr. KENEALY: I am glad I challenged her production.

Mr. HAWKINS: *We did not know what she was about to say!!!*

Dr. KENEALY: That is going rather far. However, while she said that ROGER had no twitch, she admitted that ROBERT TICHBORNE had. Can you conceive such a coincidence as the TICHBORNE family having a twitch, and ARTHUR ORTON of Wapping a twitch also? I ask you to exercise your common sense; like a star it will guide you to a right conclusion. We have it, at all events, that ROBERT TICHBORNE had a twitch, and we know that Lady RADCLIFFE and the Defendant each have a twitch. I asked Miss WELD what was the defect in his speech which she noticed, and she said "It was muttering." What then becomes of the clear translucent voice which other Witnesses have spoken of?

The LORD CHIEF JUSTICE: *May not the difficulty have arisen from his speaking low, which would be consistent with his having a clear voice?*

Dr. KENEALY: We have all met with persons whose nervousness led them to mutter.

The LORD CHIEF JUSTICE: Muttering is a very different thing from that; it is speaking in a low tone.

Dr. KENEALY: It may be so, my lord. We know there is an eminent member of the House of Lords who speaks thickly and mutteringly. His voice can scarcely be called clear. The Witness says that ROGER muttered, and Lady DORMER said he mumbled. The next Witness was Mr. BURROWS, who settled ROGER'S will, and who seemed to be pressed into the service on the question of identity. He acknowledged that his recollection did not go beyond this, that ROGER was a slim person, and so I may dismiss him. Mr. BUSH came next. He is now a barrister, and was in Mr. BURROWS' office as a pupil. He saw ROGER twice in his life twenty years ago. Yet, Emperor-like, he undertook to say that there was no resemblance between ROGER and the Defendant—the Prisoner, as he more than once called him. He recollected ROGER'S hair, and said it was dark brown. He did not notice ROGER'S legs, or hands, or feet, and could not say whether he had any twitch of the eyebrows, and yet he must have been animated and excited and interested when making a will, particularly one in which he left the reversion of his estates to KATE DOUGHTY.

MISS KATE DOUGHTY AND MISS WELD ON THE ICE.

The LORD CHIEF JUSTICE: But he did not do so.

Dr. KENEALY: Virtually, my lord.

The LORD CHIEF JUSTICE: In the event of ALFRED'S death without issue the estates were to go to his cousin's second son, and if she had no sons, then to herself, but for life only.

Dr. KENEALY: All I meant to convey was that in the event of ALFRED having no issue the estate was to come back to the DOUGHTYS.

The LORD CHIEF JUSTICE: Oh, quite so.

Dr. KENEALY: The next gentleman we have is the Rev. ROBERT MOUNT, who was with ROGER fifteen or twenty minutes before ROGER went on board the steamer at Southampton, and never saw him before or since. The Prosecution must have been in great straits when they called such a Witness. He, however, spoke of a plausible speech he made to Lady TICHBORNE, as to the expected visit of the Defendant, expressing his surprise that the interview was to take place in France and not in England. But he said, "She still wished the interview to take place in France," showing that it was by her desire that it took place there, and that she evidently was afraid of the opposition of her son's English relatives. He was asked by me, "Was his hair dark brown?" and he gave me the evasive answer, which he re-

peated, "It was a dark hair." Many of these Witnesses, you must have observed, were like eels in one's hand, and I gave up the matter in despair. After much fencing with me, he admitted that Lady TICHBORNE evidenced dissatisfaction and unhappiness—no doubt produced by the proceedings which she feared would be taken to defeat her son's claim. This Witness wrote to Lady TICHBORNE a very remarkable letter, in which he gave her information of the movements of the Defendant and BOGLE. Priests are like telegraphs. They have communication with many persons in many places, and particularly priests of the Church of Rome. But see how this priest addresses Lady TICHBORNE: "The Hon. Lady TICHBORNE, Dowager"—a prefix to which she was no more entitled than I am. Now, what becomes of the "Lady JAMES TICHBORNE," and all that rubbish?

The LORD CHIEF JUSTICE: *It is clearly a mistake as to her descent.*

Dr. KENEALY: No doubt, my lord: but there it is: and made by an educated man—a priest of the Roman Church. If the Defendant errs in the like manner, may it not be a mistake?

The LORD CHIEF JUSTICE: The weight sought to be attached by the other side to the argument—if it be entitled to any—is that the Defendant, if ROGER TICHBORNE, would, from his position, have known how to address a letter.

Dr. KENEALY: But his mother was not Lady TICHBORNE until 1853.

The LORD CHIEF JUSTICE: True; but he knew two aunts, each of whom had the title.

Dr. KENEALY: If there be any weight in the argument, it is infinitesimal. Then this Witness was asked whether a man in the Roman Church could be married under a false name. You are aware, Gentlemen, that anyone can change his name, if he does so *bona fide*, and not for the purpose of fraud. The Witness said that if a man gave a false name, it would be a lie, and he would therefore commit a sin; that no Roman Catholic, unless he were a lunatic, would go to confession under a false name. If he could not go conscientiously, he would not go at all. If the Defendant had said to the priest, "My name is not CASTRO; I will not tell you my real name, or why I have sssumed another," no priest would have married him.

The LORD CHIEF JUSTICE: Is that so?

Dr. KENEALY: It is the inference I draw from the evidence.

The LORD CHIEF JUSTICE: Mr. MOUNT was speaking of a case in which a man gives a name which he does not intend to keep. I doubt very much whether if a man gave a name which was not his real name, and declined to give the real name, the priest would be entitled to inquiry further.

Dr. KENEALY: The priest would be entitled to sift his conscience and find out why he was using the name.

The LORD CHIEF JUSTICE: Suppose a man to have been guilty of high treason, and to be living under another name in exile, the priest would not be entitled to insist upon his giving his real name if he said there were reasons for not disclosing it.

Dr. KENEALY: The priest would be entitled to ask him, "Have you changed your name in consequence of having committed any sin?" If the man said "No," then I do not think the priest would be entitled to go further.

The LORD CHIEF JUSTICE: But if he said "I am living in the face of the world as CASTRO, and that is the name I choose to go by"—what right would any priest have to go further than that?

Dr. KENEALY: The priest would be entitled to ask him why he changed his name.

The LORD CHIEF JUSTICE: I do not think so.

Dr. KENEALY: He would be unable to sift the conscience of the penitent.

Mr. Justice MELLOR: But the Witness said that, even had he refused to confess, he could not have abstained from marrying him.

Dr. KENEALY: No doubt; but the priest would advise a man to confess, and if he did so he would have a right to sift his conscience, and the man would be bound to give a true or a false answer.

The LORD CHIEF JUSTICE: Take the case which I have put, of a man who had escaped from the country, having committed high treason—living in disguise under an assumed name, and never intending to assume his own again?

Dr. KENEALY: I repeat, that the priest would be entitled to learn the whole facts in confession.

The LORD CHIEF JUSTICE: I hope it is not so, but I am not sufficiently informed to be able to solve the question.

Dr. KENEALY: The priest would not be doing his duty if he did not sift the conscience.

The LORD CHIEF JUSTICE: Sift it how?

Dr. KENEALY: By asking him why he was passing under an assumed name.

The LORD CHIEF JUSTICE: He would sufficiently sift it by asking what his real name was. If it were refused he could not insist on knowing it.

Dr. KENEALY: He would say, "Is it because you have committed some crime and are evading justice?"

The LORD CHIEF JUSTICE: *We are losing ourselves in speculation!!!*

Mr. TAYLOR (Juror): One of the priests said the name is no sin.

Dr. KENEALY: True; it is not the name, but the cause of changing it may be a sin. That is one of the sophisms insisted on by priests of the Church of Rome.

The LORD CHIEF JUSTICE: Might not a man say, "I belong to a distinguished family in England; I am living in a humble position, and I do not wish to go by the name of my family"? What difficulty would there be in stating that to the priest?

Dr. KENEALY: None at all, my lord; but that would not be a true statement on the part of ROGER TICHBORNE, who had been living out in the bush.

The LORD CHIEF JUSTICE: Not true?

Dr. KENEALY: No, my lord; he had been doing a great many things that would not bear examination.

The LORD CHIEF JUSTICE: *What had he done?*

Dr. KENEALY: I do not know, my lord, what he had done. There have been a great many insinuations that he had been leading a very bad life.

The LORD CHIEF JUSTICE: Not such a life as would drive a man into exile—nothing that would induce him to renounce his position and country, and live in poverty and exile for so many years. Other motives may be suggested.

Dr. KENEALY: This Witness, at all events, did not solve the difficulty. "I have," he said, "no further answer to give."

I now call attention to the very few persons in the humbler rank of life who were called to say, "That is not ROGER TICHBORNE." One would think that if he were not ROGER there is not a tenant on the estate who would not have been put in the box. I may be asked, Why did you not call every farmer on the Tichborne Estate to say he is ROGER. Gentlemen, I am in a very different position from the Prosecution. It is one thing to get a tenant to come and give evidence the effect of which will be in favour of his landlord—it is quite another thing to ask a tenant to come and give evidence which will make against his landlord. Even if a man were questioned, and said, "Yes; he is the young master, but do not call me," I would not—you would not—place him in the box. Well, Gentlemen, they call JOHN ETHERIDGE, the blacksmith, first, but his evidence is too vague to be relied on. ROGER was slight, he said, and gentleman-born, and that we all knew before. GEORGE PAGE, the ostler, comes next, and his evidence is not more valuable. ROGER, he said, was a tall, thin young man; but "I cannot tell how old he was—I never looked in his mouth." Of course he swore that the Defendant was not ROGER TICHBORNE. He never saw him in his shirt sleeves—"he was too lazy for that." These men think they do the cause good by such answers; but they are mistaken. The next person called was BURDON, who knew ROGER from 1845 to 1853. He is now an Officer of the Customs, which post he got through the SEYMOUR family, so, of course, all his prepossessions are in favour of his friends. He is not asked for any description that I can find of ROGER TICHBORNE. He mentions a thing that the Defendant was not asked about in the Common Pleas, and which I ask you to put out of your consideration—namely, the mark of a boil on ROGER'S chest. He is an old friend and retainer of the Family, and if there had been any such thing it would have been communicated to the Family before the Defendant was personally examined. ROGER, he said, had a sallow appearance, sloping shoulders, and dark-brown hair—a description which quite fits this Defendant. He never in his life, he swore, saw ROGER move his eyebrows. If he had a twitch, he added, he must have seen it. Neither did he ever notice that ROGER was in-kneed. This man had an interview with HOLMES, and he says he was asked so many questions that he came to the conclusion that a gross swindle was in contemplation. He knew ROGER since he was nine years of age, and said he frequently saw him stripped; and you remember the evidence he gave as to the tattoo-marks. As soon as he read it in the papers he remembered that ROGER was tattooed. He did not recollect it before, he said, because he had seen so many sailors who were tattooed. On the last night ROGER TICHBORNE was in Paris, he made him a mustard poultice, and he then saw the boil to which he speaks. I ask you to believe if you can that he saw the boil and remembers it, but did not recollect the tattoo on the young gentleman. I will not insult your understanding by asking you to reject his evidence on this point. With regard to personal appearance he says ROGER had rather bushy eyelashes and his eyebrows were rather thick. He says he does not remember his moving his eyebrows in a twitching manner. This Witness is not asked about a single feature of ROGER TICHBORNE, and he does not mention one. ALFRED BRAND is the next Witness. He was a gamekeeper, and first saw ROGER in 1847. He says ROGER was fond of rifle practice and rook shooting, and from rook shooting, I submit to you, he has passed to pigeon shooting; in fact, he can shoot anything. My Witnesses give more evidence with regard to the shooting than those of the Prosecution; but I will come to that by-and-bye. This Witness says he saw ROGER trying to catch minnows with his hand. Fancy, Gentlemen, a Lieutenant of Carabineers spending his time in catching minnows with his hand—just like trying to catch birds by putting salt upon their tails. (Laughter.)

The LORD CHIEF JUSTICE: *If he wanted them, why should he not catch them, even though he were a lieutenant in the army?*

Dr. KENEALY: Why should he want them?

The LORD CHIEF JUSTICE: For bait.

Dr. KENEALY: Indeed! I have heard no such evidence given.

The LORD CHIEF JUSTICE: Minnows are probably the best bait you can have for a certain kind of fish.

Dr. KENEALY: I can understand a young fellow going out with a net to catch minnows, but he must have been very hard up for bait if he waited till he caught them with his hands.

The LORD CHIEF JUSTICE: Here is one (Master COCKBURN) who I fancy has caught them many times.

Dr. KENEALY: I am glad the Master has that accomplishment.

Master COCKBURN: Yes; I have done so many times with my hands.

The LORD CHIEF JUSTICE: That can be done in shallow water.

Master COCKBURN: Mr. TAYLOR (one of the Jurors) had a quantity caught for me only the other day.

Mr. TAYLOR: My little boy went out for them, but how he caught them I don't know.

The LORD CHIEF JUSTICE: You could catch them this way (holding his two hands together in the form of a cup).

Dr. KENEALY: Well, it seems there are some people who can catch minnows with their hands. This Witness speaks of ROGER catching them with his right hand; but Lady RADCLIFFE says it was with his left, and that he was holding on to a tree with the other.

Another JUROR: I have caught them myself in that way.

Dr. KENEALY: Fancy a man arrived at years of discretion doing that!

Mr. TAYLOR: They are caught for aquariums sometimes.

Dr. KENEALY: There were none invented then. I should think fish would be liable to injury if caught by hand; a fish is a very timid creature, and will die in the hand.

The LORD CHIEF JUSTICE: Do you know an instance of a fish dying in the hand?

Dr. KENEALY: Yes; I know an instance. When I was a boy I once saw a young lady take a gold fish from a globe, and directly she removed it it died.

Mr. Serjeant PARRY: Perhaps she squeezed it. (Laughter.)

A JURYMAN: I saw a couple of carp the other day which had been sent through the post. They were alive.

Dr. KENEALY: Then wonders will never cease. The description goes on: "He was a thin young man, very melancholy-looking, and had dark hair, which used to hang over his forehead. He had thin legs, but used to walk very well." He then mentions the Defendant's voice as being a great deal gruffer than ROGER TICHBORNE'S, which was a soft one. He says he had three interviews with the Defendant. You heard the unceremonious way in which this person has always treated people in a superior position to Defendant. The Witness says the Defendant said to him when he first saw him, "You don't know me, BRAND?" and the other gave him a distinct cut by saying, "No, I don't," and then he says the Defendant asked what he would have to drink. Very likely that, after the manner in which the gamekeeper had answered him! The Witness goes on to say that he refused spirits, and ultimately said he would have a drop of port, on which the Defendant opened a bottle of that wine. Notwithstanding the slaps on the face this gamekeeper was giving him, we are asked to believe that he opened a bottle of port. Further, in return for this bottle, the Witness says, when the Defendant asked him whether he remembered the pony running away with him (Defendant), he replied, "I remember its running away with ROGER TICHBORNE, but not with you." At this interview BRAND had treated the Defendant with contempt. Now we will see what took place at the second interview. HOLMES, he said, wrote to him, and, suspicious as HOLMES'S conduct has been, I could hardly suspect him of what I am about to mention, and they had an interview; at which HOLMES "asked him whether he smoked." Witness says he replied, "I do occasionally," whereupon HOLMES, continuing the conversation, said, "Why not stay and have a glass or two of grog and a cigar, and you will soon be satisfied that he is Sir ROGER." The Claimant then said, "If you stick to me, I will stick to you, and you shall never want as long as I live." Witness continued, "I replied, 'I am very much obliged for your kind offer: but I never did want, and never shall; but as to swearing that you are Sir ROGER I will see you ——.'" And here there is a dash. I need only read such rubbish out to you to satisfy you it cannot be believed. This man is one who cannot depose to a single feature of ROGER TICHBORNE. This Witness goes on to speak of the tattoo. I should expect from the nature of his evidence altogether that he would do so, and further than that I will say nothing concerning him. I am glad to say he is the last Witness I shall have occasion to mention who was called by the Prosecution. I have directed your attention to only four persons—namely, BURDON, PAGE, ETHERIDGE, and BRAND—in the humbler classes of life, who have been called against the Defendant to swear that he is not ROGER TICHBORNE. No independent man in the humbler classes has been called to negative the fact that he is Sir ROGER. They are persons more or less under the influence of unreasoning prejudice; or capable of being biassed by their superiors. They seem to act—as I sometimes fancy you, Gentlemen, are summoned to act—on the conclusive logic of the Black DOUGLAS in the "Fair Maid of Perth," when sitting on the Trial of Sir JOHN RAMORNY, for the murder of the Duke of ROTHSAY. The Lord BALVENY descended to tell him that the criminals were already executed. * "Then there is no further use in the Trial," said the Earl; "how say you, good men of inquest, were these men guilty of High Treason?" "Guilty!" exclaimed the obsequious inquest, with edifying unanimity; "we need no further evidence!"

Gentlemen, I now proceed to open to you my comments upon the evidence that has been given on the part of the defence. There is one Witness to whom I will refer by-and-by, namely, Captain OATES; but I will reserve him until I come to what took place at Rio. I shall probably have to call your attention, when I come to the question of the marks and signs upon the Defendant—when I come to the evidence of Mr. HEAPS—to the malformation. The Defendant has a peculiar malformation,* as has been proved beyond a doubt; and this, if it had existed in ARTHUR ORTON, would have been known to the classes amongst which he was in the habit of moving. No Witness has been called to say that ARTHUR ORTON had such a malformation, and this must be taken as a conclusive proof that the Defendant is not he.

The LORD CHIEF JUSTICE: Why so?

Dr. KENEALY: Such a mark as that would be known and spread, and become a joke against him. In the case of ROGER TICHBORNE it became a laugh against him in his regiment; in fact, he had a nickname bestowed on him in consequence of the peculiarity.

The LORD CHIEF JUSTICE: There is no proof of his having had a nickname.

Dr. KENEALY: He told Captain FRASER of it.

The LORD CHIEF JUSTICE: He said a certain thing was said to him one night at mess.

Dr. KENEALY: If he was called that name even only on one occasion, there must have been some reason for it; and if that reason existed that night, it would always exist. I say the evidence I have given with regard to that is strong. You may think it is nothing, but I think it is strong; and I say that if ARTHUR ORTON had any such malformation it would have been made a laugh against him, and we should have heard of it. It would have been one of those things which would have well suited the atmosphere of Wapping, and the joke would stick to him all his life; but it is not pretended that ORTON had any such peculiarity.

Now, Gentlemen, before I enter upon a dissection of the evidence of identity which I have offered, I ought to make some observations to you upon what I call individual evidence. Every one almost has an individualism about him, either in his walk, his manner, his smile, or the expression of his eye. This remarkable man, whom you are now trying, is perhaps the most remarkable who has appeared for centuries, and is certainly the subject of the most remarkable Trial which has ever taken place in England since her judicial records began. We should expect, then, that in such a man a decided individualism would exist. You have heard something about his voice, and you remember, no doubt, BLONDEL traversing the earth in search of RICHARD I., who was confined by the Duke of AUSTRIA in a secret tower to which there was no access, and the remarkable individualism exhibited in his voice, which enabled the imprisoned monarch to identify him and discover himself. We have an earlier proof of this individualism in the voice. You will remember ISAAC, when JACOB was brought before him, felt his hand, and although he was well and skilfully disguised, he said "The voice is JACOB'S voice, but the hands are the hands of ESAU." So that even in these early sacred volumes the individualisation of a man, or rather of two men, is distinctly pointed out—the individualisation of ESAU by the hands and that of JACOB by the voice. Now, Gentlemen, you have before you in Court a photographic copy of ROGER TICHBORNE as he was taken in Chili, and I hold here in my hand an enlarged copy of that, and a photograph of the

* Chapter XXXII. The chopping off the spurs from RAMORNY before execution, reminds one of the dispatenting of Dr. KENEALY before disbarment.

* Mr. ONSLOW, writing in the 'Yorkshire Independent' of December 6th, 1878, has the following on the Malformation. "Now, it is true, as your corespondent 'O. B. P.' says, that there was no evidence produced in Court to show that ROGER TICHBORNE ever had a malformation, simply because his mother died before the Trial. Had she been examined, she would have sworn that her son, ROGER, was born with a congenital mark; also with a malformation. Now, Major PHILLIPS, of the Carabineers, made a statement that he had had ocular demonstration of the extraordinary malformation on the person of his old friend, ROGER TICHBORNE. Major PHILLIPS also died before the Trial. It is true, therefore, that the Claimant has nothing but secondary evidence to prove the malformation. But Lord COLERIDGE, in the first Trial, whilst cross-examining the Claimant, suddenly asked him if he had any particular nickname at Stonyhurst? He instantly replied, Yes, he had. Upon which COLERIDGE asked him, what it was? He said, he declined to say. "COLERIDGE: Why? Claimant: Because it was a name I wished to forget." This reply was, to COLERIDGE'S mind, such a good answer that he shut up, and asked him no more questions. The reply showed that the malformation was the cause of his nickname.

We have not been able to find the particular passage to which Mr. ONSLOW refers: but it is clear from what follows, that Mr. GIFFORD knew of the particular name of S—k, as having been given to TICHBORNE at "school," or Stonyhurst, as well as in the regiment. "Were you known by any nickname at school? —*There was one nickname I was called which very much annoyed me at the time. I do not like to repeat it*" (page 710).

Defendant, and if you cut the face of the Defendant out of the one and insert it——

Mr. HAWKINS: I must object to these photographs; they have never been in evidence.

Dr. KENEALY: I am entitled to use these as an illustration.

The LORD CHIEF JUSTICE: I think not.

Dr. KENEALY: I am only using an enlarged copy of the Chili photograph.

The LORD CHIEF JUSTICE: They have not been put in evidence.

Mr. HAWKINS: I was about to use an enlarged photograph when I was checked.

The LORD CHIEF JUSTICE: I thought at the time they would throw light on the matter, but I would not allow them to be used.

Dr. KENEALY: I will not insist if your lordship thinks they should not be used.

The LORD CHIEF JUSTICE: If you had put in an enlarged photograph during the evidence, that would have been another thing. I expressed regret some time back that the picture of Lady TICHBORNE had not been put in.

Dr. KENEALY: I raised no objection: on the contrary, I wished it done. Mr. HAWKINS could have produced it after I consented.*

Mr. Justice LUSH: I think, Dr. KENEALY, you objected to the enlarged photograph being put in.

Dr. KENEALY: I objected to it as rebutting evidence.

Mr. Justice LUSH: You objected to it because it was not produced at the right time.

Dr. KENEALY: Yes, my lord.

Mr. Justice LUSH: That is the objection now. You can avail yourself of the same argument, however, by the use of the photographs that are in evidence.

Dr. KENEALY: For the present I will pass that over.

I now call your attention, Gentlemen, to the marks which appear on the Defendant. Upon the back part of his head, on the right side, he has the mark left by the accident that befell him at Pornic. On his face, on the upper side of the right eyebrow, he has another mark over the nose. The nose appears as though it had been broken, and it is proved by Sir W. FERGUSSON. He has a scar on the left eyebrow, and he has no mark or scar whatever upon the ear, and no sign of a puncture. On his right arm there are two small vaccination marks, in the usual place. He has no mark of bleeding at the bend of the elbow of the right arm. He has a circular scar midway between the elbow and the wrist of the right forearm, and he has a scar on the right wrist of a circular form near the root of the thumb. His left arm bears a mark upon the ring finger. He has two small marks an inch and a half apart near the shoulder of the left arm. These are what are said to be the remains of the seton. They are said to be, I suppose, by the Prosecution, scars which he himself manufactured at the instance of somebody for the purpose of assimilating himself in that particular way to ROGER TICHBORNE, who was supposed by somebody to have seton marks upon him. He has a small mark between the shoulder and the elbow, about the size of a florin. That is the mark which they say ought to have appeared, and would have appeared, on the real ROGER TICHBORNE, because that is the place where he had the issue. It is a very singular thing that this Defendant should bear the remnant of what may have been an issue mark upon the real place where ROGER TICHBORNE would have it. He has a deep square scar between the elbow and the wrist. He has a line an inch and a quarter in length running towards the wrist from the square scar, the thumb of the left hand is pointed and peculiar in the way you have seen, and on the fingers of the left hand he has slight points as if punctured. His knees are a little more in than usual, and on his right leg there is a mark over the knee-cap and a trauverse scar an inch long about an inch and a half above the knee-cap, and another smaller on the outer side. On the inner side of the right ankle he has a small depression about an inch from the sole of the foot. On the left leg and foot a clean incised wound, an inch and a quarter in length, an inch and a half from the lower ridge of the ankle-bone, and two inches from the under part of the foot. There is there also an indentation, as if the result of an old ulceration. On the trunk, a brown mark on the left side. Gentlemen, those punctures on his left leg are attempted to be disposed of by recalling Colonel BICKERSTAFFE, who says he had only one puncture. I think you will rather believe the scientific test adopted by Dr. WILSON as more likely to be correct.

The LORD CHIEF JUSTICE: I do not think he said there was only one puncture. I asked him if he took upon himself to say whether the surgeon made more than one puncture with the lancet.

Dr. KENEALY: The impression on your lordship's mind was that there was only one puncture, and you asked him the question.

The LORD CHIEF JUSTICE: I wanted to know from Colonel BICKERSTAFFE whether he would take upon himself to say whether the surgeon at Canterbury made more than one specific mark.

Dr. KENEALY: I think you recalled him as to the temporal artery.

The LORD CHIEF JUSTICE: That was not so. Colonel BICKERSTAFFE said the doctor did not lance him more than once on the ankle.

Dr. KENEALY: Consequently there would be only one puncture. But, Gentlemen, you will not accept the evidence of Colonel BICKERSTAFFE as opposed to the scientific test applied by Dr. WILSON. The Prosecution might have applied to the Court for permission for their surgeon to use a similar test, and then the result would have been either a confirmation of the evidence given by Dr. WILSON or a contradiction of it.

The LORD CHIEF JUSTICE: I think Sir WILLIAM FERGUSSON only found one puncture.

Dr. KENEALY: He may not have applied the same test.

The LORD CHIEF JUSTICE: Why did you not ask him?

Dr. KENEALY: I cannot say. All I know is that Dr. WILSON'S testimony appears before the Jury contradicted only by Colonel BICKERSTAFFE.

The LORD CHIEF JUSTICE: And the other surgeon.

Dr. KENEALY: Who did not apply the test that Dr. WILSON applied, and as the medical Witnesses were called as rebutting Witnesses, and did not apply that test, I look on that fact as strongly in my favour. I have called your attention to those two marks on the Defendant's arm which indicate a seton. No one pretends that ARTHUR ORTON had a seton, but the marks exist on the Defendant. I wonder, then, who told him that ROGER TICHBORNE had a seton? Was it his mother? The theory of the Prosecution is that he manufactured the marks artificially after he came to England. Well, CARTER and M'CANN could have known nothing about ROGER TICHBORNE'S life in Paris, but some one must have told him that ROGER TICHBORNE had a seton and an issue, and it would have been the Mother from what I showed you yesterday. Everything has been assigned to CARTER and M'CANN or BAIGENT, and some other person—say Mr. ONSLOW or Mr. WHALLEY.

The LORD CHIEF JUSTICE: It was known at Upton.

Dr. KENEALY: It was known in Upton when he was eleven years of age, but it is not suggested that there is a human being in existence who lived at Upton who ever came in contact with the Defendant.

The LORD CHIEF JUSTICE: Two; BOGLE and MOORE.

Dr. KENEALY: As to MOORE having any knowledge of the seton I do not think there is any pretence for it; but BOGLE certainly is a likely person to have known it. It must then have been either BOGLE or Lady TICHBORNE.

The FOREMAN (who had been referring to the evidence): My lord, Sir W. FERGUSSON does speak of various scars on the right ankle, as if from punctures, and particularly one scar.

Dr. KENEALY: I am greatly indebted to you for mentioning that. Now on that matter of the seton, we have two persons suggested by my lord, BOGLE and MOORE.

The LORD CHIEF JUSTICE: MOORE has not been called.

Dr. KENEALY: He has not, and I am very glad that I did not call him. What the Foreman says had escaped my notice, and that of his lordship also, though when the Lord Chief Justice comes to sum up you will find that little or nothing has escaped him. It must have been either BOGLE or Lady TICHBORNE who informed him; but does any one believe that Lady TICHBORNE would have countenanced the manufacture of these marks, or that BOGLE would have lent himself to such a fraud? Did BOGLE suggest the seton? If he did he must have been out of his senses, and you have seen him and you know he is not. My theory is that the Defendant, ROGER TICHBORNE, had a seton, and that an issue followed, and that the scars he bears, one and all, are real and have not been manufactured. To suppose for a moment that he went on making cuts and scars on himself from time to time in order to resemble ROGER TICHBORNE, is as wild a supposition as I can conceive. I have referred you to an illustration with reference to individualism from the Holy Scriptures, and on this point I will call your attention to the fact that HOMER speaks of ULYSSES as having been recognised by his old nurse, by an old scar upon his leg. The various scenes and adventures he had passed through had so obliterated every impression of his features from the mind of the old woman that he was forgotten by her; but he was immediately brought back to her memory by the old scar.

> Replenished from the purest springs
> The laver straight with loving care she brings;
> In the deep vase, that shone like burnish'd gold,
> The boiling fluid temperates the cold.

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* REFLECTIONS ON THE PORTRAIT OF THE DOWAGER LADY TICHBORNE.

> Long-suffering Mother, with the pleading eyes,
> And thoughtful, care-worn brow;
> What pathos breathes in thy resemblance now,
> Ah, if thou could'st from out thy grave arise!
> Hadst thou been with us still thy son to claim,
> Injustice had not dared to lift the hand
> That marked thy loved one with the felon's brand,
> BELIAL had not robbed him of his name!
> The Mother's image comes to enforce the prayer
> That reached us lately from the prison grate,
> "Double your efforts ere it be too late,"
> (That lonely cry sent through the moorland air!)
> Oh, may a people's pleadings reach the throne
> Of her who loves her people's heart to own.
>
> H. H.

Meantime revolving in his thoughtful mind
The scar with which his manly knee was signed;
His face averting from the crackling blaze,
His shoulders intercept th' unfriendly rays;
Thus cautious in the obscure he hop'd to fly
The curious search of EURYCLEA'S eye.
Cautious in vain! nor ceased the dame to find
The scar with which his manly knee was sign'd.
This on PARNASSUS (combatting the boar)
With glancing rage the tusky savage tore.
Attended by his brave maternal race,
His grandsire sent him to the sylvan chase.*

These things are of great importance, for if you find scars on the Defendant which were on ROGER TICHBORNE, they go far to prove, together with all the other wonderful things that exist in this Case, that he is ROGER TICHBORNE. There is only one remark I will make with reference to the Chili photographs, and that is that although Mr. HAWKINS is very fond of putting them into the hands of very illiterate Witnesses, he did not show them either to Mr. BIDDULPH, or Miss BRAINE, or Captain CUNLIFFE. It would have been of great value to the elucidation of the truth if they had seen them, but they were kept back. I showed you the other day that ORTON had no brown mark as this Defendant has. Upon the thumb I will say nothing. Mr. GOSFORD was able to discover that which was not apparent to some of you, I am surprised to see. Looking at the photographs, he says he sees on the thumb a large protuberance of flesh, and, comparing it with the Defendant's thumb, he says there is a similiarity plainly discernible between the two. In the interests of truth and justice I entreat you to look at the photographs again after this evidence. If the peculiarity exists, and this evidence is true, it proves conclusively that the Defendant is ROGER TICHBORNE, and if the peculiarity existed in the Paris photograph of 1866 and in the Chili photograph of 1854, it is proof positive that he is whom he represents himself to be, and I ask you not to make up your minds on the matter until you have again carefully examined the photographs. These marks of individualism about the man, to which I call your attention, must be taken not to exist in ARTHUR ORTON, as they were not spoken to by the Witnesses I will now call your attention to an analysis of the evidence for the Defence that has been made for me by my learned friend Mr. COOPER-WYLD, on the peculiarities of ROGER TICHBORNE, and a careful examination of this analysis will go very far to show you that you have ROGER TICHBORNE before you. Bear in mind, if you please, all the time that you are hearing this, that all the mental features of the man have become as changed as some of the physical ones. The first thing to which I call your attention in ROGER TICHBORNE is the hair. No less than 87 Witnesses speak on this head—9 of them say it was dark, 17 say it was brown, 58 that it was dark brown, 4 that it was a lightish brown, 5 that it was medium—neither light nor dark—16 that it was long, and thirty that it was straight. I mention these merely to show the agreement which exists amongst certain of my Witnesses with the evidence given by the Prosecution, but I will rather confine you to the evidence of those persons who say the hair was dark, that it was brown, and that it was dark brown, because that is the description of this Defendant's hair. (The learned Counsel then proceeded to read the analysis, which gave the name of each Witness, with his or her description of ROGER TICHBORNE'S hair in evidence.) Some of the Witnesses do not agree with regard to the colour, one or two of them differing from the rest by calling it light brown. I mention this as showing that there could have been no coaching. Several of them say that the colour of ROGER TICHBORNE'S hair was the same as that of the Defendant, and some that the Defendant's is now darker. This is very probable, inasmuch as the hair gets darker with age.

The LORD CHIEF JUSTICE: Is that so, Dr. KENEALY? I only ask for information.

Dr. KENEALY: I believe that is a fact. I have been told myself that my hair is darker than it used to be. All that I will say with regard to that syllabus is that 58 Witnesses of mine say that the hair was dark-brown, while out of the fifty-three in the Prosecution examined with regard to this matter, no less than twenty-six mention the same colour. My belief is that up to the time when a man reaches forty years of age his hair grows darker, but you must form your own conclusion upon that point. I now come to the eyes, eyebrows, and the twitch of the eyebrows—three peculiarities which existed in ROGER TICHBORNE, and which I submit are unalterable. There were eighty-six Witnesses who spoke on these heads, and of these four say "he had a twitch," twenty-five that "he had a twitch in the eyebrows," twenty that "he had twitch in the eyebrows when talking or excited," four that "he used to lift his eyebrows," sixteen that "he had a twitch in the eye or brow," fifteen that "he had a twitch in the eye or brows when talking or excited, smoking, or taking snuff," four that "he had a twitch in the right eyebrow," five that "he had a twitch in the left eyebrow," fifteen that "he had a winking of the eye or eyes," four that "he had a winking when speaking," and two that "the family had a twitch." That, of course, is demonstrated to some extent by their own evidence. Upon the question of the eyebrows twenty-nine of my Witnesses say, "ROGER TICHBORNE had long, dark, marked, overhanging and heavy eyebrows," nine that "he had thick eyebrows," six that "he had bushy eyebrows," twelve that "he had dark brown eyebrows," five that "the eyebrows were arched," four that "they were the same colour as his hair," and six that he had "large, full eyebrows, projecting." [The learned Counsel read those parts of the evidence of the Witnesses in question which referred to ROGER TICHBORNE'S eyebrows.] You will observe that some of my Witnesses speak as to ROGER TICHBORNE having had a good eye, and that accords with the fact that the Defendant is a good shot.

The LORD CHIEF JUSTICE: Is it not a disputed fact that ROGER was a good shot?

Dr. KENEALY: I take my own Witnesses, my lord.

Mr. TAYLOR (Juror): He was a shocking bad shot.

The LORD CHIEF JUSTICE: It is not generally admitted.

Dr. KENEALY: I do not know who told Mr. TAYLOR that TICHBORNE was "a shocking bad shot." The impression on my mind is that he was quite the reverse.

Mr. TAYLOR (shaking his head): Oh, no! (Much laughter.)

Dr. KENEALY: On the question of the eyes and eyebrows ten of the Witnesses for the Prosecution say that the former were grey—blue or bluish-grey—two of them that he had large eyes, two that he had marked eyes, two that he had fine eyes, and one that he had melancholy eyes—eyes like his mother. You remember that trait is exhibited in the Paris photograph of Lady TICHBORNE. Five say his eyebrows were broad and thick, two that they were dark, one that they were large, two that they were marked, five that they were arched, and no less than eleven say that he had no twitch in the eye; but, after the evidence I have called, it must be taken as certain that he had a twitch, and that these Witnesses were mistaken. There is another unchangeable peculiarity, and that is with the ears. There have been only six Witnesses who speak on behalf of the Defence on that point. I thought that matter would be concluded by the Chili photograph, and therefore I did not trouble myself to examine Witnesses with regard to it. Four of these Witnesses say that he had large ears, three that the lobes were large and not attached to the cheek, and one says he knows nothing about the lobes. On the part of the Prosecution there are only four persons called on this head, and of these one said the ears were large, one that they were rather small, and two that they were adherent to the cheek

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY continued: The question of neck I should hardly have thought it necessary to read evidence on but for the fact that one of the learned Judges who preside seemed to think it one of some importance. Otherwise, I say I would not have dwelt on this, because the neck is one of the most difficult features to speak to after the lapse of twenty years. Some Witnesses, however, have spoken about it. One says it was not long, one says it was not short, and four say it was medium, and therefore I ask you to believe that it was medium. Mrs. NANGLE likened the Defendant to a turtle; but I think he is more like a turbot, with his sloping shoulders and thin lips. I come next to the shoulders. There are no less than fifty-three Witnesses who speak to them, and most of them probably also include the chest; but as we all agree about the shoulders, it is perhaps not necessary for me to go into the evidence as to them, and I will come at once to the chest.

The LORD CHIEF JUSTICE: I don't think you could put the evidence more briefly than you are doing now.

Dr. KENEALY: I am obliged to your lordship. Of course I have no object in consuming time. On the question of the chest, the evidence offered on the part of the Defence is singular and strange in the extreme. There are forty-two Witnesses who speak to that matter. Of these ten say he had a broad chest, nineteen say he was not pigeon-chested, three say he was neither broad nor narrow, while sixteen say he was not flat-chested. I thought it necessary to call these Witnesses, because the Prosecution seemed to attach great importance to the chest, and out of their twenty-seven Witnesses who spoke on the subject twenty-one say it was narrow. I come now to the hands. There were thirty-four Witnesses examined as to them. Of these nineteen say distinctly they were small, three say they were rather small, seven say they were very small, four say they were medium, one says he had dimpled hands like a lady, and one says his gloves were 7¼ or 7½. How on earth could the splay-footed bullocky ORTON have these small hands? Why, Gentlemen, I have got you all into a cleft-stick you cannot get out of. The Prosecution called thirty-eight Witnesses to speak to his hands. Of these, six said they were small, two said they were medium, and only one said they were large. Therefore I think it pretty clear that he had small hands. The thumb, I thought, would have been settled by the daguerreotype, and I asked only three Witnesses about it, but they described a peculiarity such as the Defendant has. I come now to his feet. There were thirty-one Witnesses who were questioned about them. Twenty-seven say they were small, and four say they were medium. One adds he had a high instep. Many of the Witnesses, let me remind you, who speak to these personal peculiarities are Carabineers; and the observation of Carabineers is such that I believe they would be able, after twenty years, to spot a deserter.

The LORD CHIEF JUSTICE: Is that peculiar to Carabineers?

* "Odyssey," Book XIX., verse 450.

Dr. KENEALY: No; it is the same with the men of other regiments, I suppose.

The LORD CHIEF JUSTICE: But is it not also true of those we have known at college, in school, or in the profession to which we all belong?

Dr. KENEALY: I don't think we are in the habit of noticing anyone's features so much as military men. Out of the ten Witnesses called for the Prosecution, six say he had small feet, and one that his feet were medium size. I come now to his walk. There are seventy-six Witnesses who were called by me to speak to that. Of these twenty-three say his walk was awkward, and if the Defendant will excuse me for saying so, I don't think his walk is the most elegant in the world. Three say that his walk was funny, five that it was curious and strange, five that it was slovenly, five that it was clumsy and slouching, four that it was shuffling and stilted, four that he threw his legs about, three that he walked like Sir HENRY, three that he walked like Sir JAMES, one that he walked like RICHARD III., but as the Witness never could have seen RICHARD, I suppose he means the stage RICHARD. (A laugh.) The question as to his knee is connected with his walk. There are nineteen who say he was in-kneed, two say he was in-kneed with both knees, thirteen say he was in-kneed with one knee, twenty-four say he turned the right knee in. I have never noticed the Defendant sufficiently close to know which knee he turns in, and you must exercise your own vision on the subject. One Witness says he played "God save the King" with his knees. (Laughter.)

The LORD CHIEF JUSTICE: What is that Witness's name?

Dr. KENEALY: I will tell you when I come to it. The name of such a Witness should certainly be handed down to history. (The learned Counsel afterwards said it was BENJAMIN WARD.) Then there are eight Witnesses who say he was knock-kneed, fifteen say he threw his legs about, five say he was awkwardly made downwards, and small from the hips, so that he could not keep up his sword. One used the expressive phrase, "He seemed to be cracking nuts with his knees." Of the Witnesses called on behalf of the Prosecution, nine say he was awkward in his walk, eight that he was peculiar, six saw no peculiarity, five that he was a bad and loose walker, two that he walked like a Frenchman—I never knew before Frenchmen had a peculiar walk—and seven that he was knock-kneed. Substantially, therefore, they agree with the Witnesses for the Defence. Upon his general appearance there is a vast quantity of evidence: but I shall only refer to such parts as have a material bearing on the Case. Three Witnesses say that in general appearance and features he resembled Sir HENRY, one says he was like Sir EDWARD, three say that in certain respects he was like Sir JAMES, one says that in the upper part of his face he was like his mother, and one—Lady BURRARD—gives a remarkably accurate and artistic description of him by saying he put her in mind of a cross in an oval. Two mention his marked eyes and eyebrows, thirteen that he was small from the hips downwards, three that he was narrow-waisted, three that he had no hips, and so on. Remember, Gentlemen, that this is evidence as to identity which cannot deceive. An impostor can deceive by acquired knowledge; but it is utterly and absolutely impossible that he can assume the features of the man he is personating. I don't care what this man remembers or forgets; for there are the features, and they cannot deceive. One of the Witnesses speaks of his resemblance to Sir EDWARD DOUGHTY; and when I come to the third issue I shall point out to you and ask you to recall the remarkable likeness Lady RADCLIFFE had to the Defendant—a likeness so strong that at times I thought them to be almost representatives of each other. Some of the Witnesses speak very freely as to his appearance, and I am sure the Defendant never heard such plain and hard things said of him as in the course of this Trial. I see some of them, too, speak of his having a half-timid expression about the face; and I suppose this refers to the same look that some of those on the other side described as wild. You have probably noticed at the Zoological Gardens a wild beast newly caught, and I imagine it conveys some idea of his appearance—something like a fish out of water. (Laughter.) I now come to his voice. That is a thing not easy to describe, and before I read to you the syllabus of the evidence on it I wish to remind you that GOSSEIN did not recognise ROGER by voice when he saw him after an absence of some years. There are no less than seventy-six Witnesses called by me who have given curious descriptions of the voice of ROGER TICHBORNE, and I submit that the majority of these are applicable to the Defendant. There are twenty-five who say it was soft, six weak, five clear and delicate, four quiet and low, eight mild, four smooth, three nice, and mild, liquid, one medium, four good, fair, pleasant, one coarse, two hoarse, one harsh, one squeaky—how a voice could be hoarse and squeaky at the same time I don't know, and so I suppose this must be a mistake—two neither smooth nor rough, four not exactly clear or harsh, three not sweet or distinct, two husky, two not manly or strong, eight like a lady's, a boy's, or a child's, five not quite so strong as a lady's, three as if he were weak-chested, three not a soldier's voice. A good many also speak to the French accent, but we are all agreed as to that. You will see, however, that the prevailing evidence is that ROGER'S was a soft, mellow, pleasing voice. How it has been since altered by time and other things, to which I have called your attention, I need not again say—I leave you to form your own conclusions on the subject. For the Prosecution, thirty-nine Witnesses are called to speak to the voice. Of these six say it was soft, two that it was gentle and mild, one that it was squeaky, three that it was indistinct, one that he was difficult to understand. On the whole, therefore I don't think there is much difference as to the voice. You must be pretty well agreed as to the height, and so I will not trouble you with anything about it, though my friend Mr. COOPER-WYLD has been kind enough to analyse the evidence on it for me. The last subject I have to speak about is that of his habits and manners, and here I would remind you that the persons I have called knew him perfectly well, and give minute descriptions of these. I claim it as a strong proof of the *bona fides* of this Defence that we have never sought to conceal anything about ROGER TICHBORNE, but that, on the contrary, we have done all in our power to elicit everything we could on the subject. This is a strong proof that I am not afraid of meeting everything that can be brought out. There are fifty-four Witnesses whom I interrogated as to his manners and habits, and these all speak to various peculiarities and habits which belonged to the undoubted man, and which I think it would be well for you to think over and reflect upon. Of these fourteen speak to his smoking, and ten to his snuff-taking; one says he was mischievous, and two say he was not fond of the society of his own class, and mixed with persons beneath him. Three say he drank freely, and two say he read little but French novels.

The LORD CHIEF JUSTICE: That was at a particular period. There is no proof it was a regular habit.

Dr. KENEALY: When I come to the third head I will show that in one of his letters to Lady DOUGHTY he made a braggart boast of having read almost every bad book, so that he could not learn anything new in that way. Five say he was quiet and reserved, and talked little; five that he played the French horn and violin; one that he played billiards; one that he played skittles, and one that he sang French songs; two say he was good-tempered, and the Defendant certainly has shown himself that by standing all the hard things I have said about him, with only the quiet rebukes he occasionally gives me; two say he was slovenly in his dress, and you will remember that this is one of the things Lady DOUGHTY was always remonstrating with him for. As to his not caring for the society of his own class, I would remark that I think it a curious thing that, although he may be presumed to have mixed with the gentlemen of Hampshire and Dorsetshire, none of them have been called as Witnesses to say so.

The LORD CHIEF JUSTICE: Colonel GREENWOOD is an exception.

Dr. KENEALY: I call him one of the Family. I mean outside it there are none.

The LORD CHIEF JUSTICE: I purposely asked the Officers whether there was any ground for saying he did not like the society of his own class, and they distinctly negatived it.

Dr. KENEALY: I know your lordship did; but that does not interfere with my argument, for none of the gentlemen of Hampshire or Dorsetshire were called to say that they had known him.

The LORD CHIEF JUSTICE: He never was there for more than a fortnight at a time, except in 1849.

Dr. KENEALY: But surely on these visits he made the acquaintance of some of the neighbouring families?

The LORD CHIEF JUSTICE: I don't know.

Dr. KENEALY: It might be fairly assumed. There were hospitalities to which one would have expected the heir to a baronetcy to have been invited.

The LORD CHIEF JUSTICE: We were told that when he was in Dublin he went into all the society of the place.

Dr. KENEALY: And if that could be proved why could it not also have been proved that he visited with the gentlemen of Hampshire? One would have expected a young man in his position to have been the cynosure of all the country round.

The LORD CHIEF JUSTICE: I don't see how he could have time to get acquainted with the gentlemen there.

Dr. KENEALY: He had been every now and again at Upton and Tichborne ever since he was a child, and yet he does not seem to have known any one.

The LORD CHIEF JUSTICE: In 1850-51 he was at Tichborne for a week; and in 1851-52 he had to leave on account of his love affair with Miss DOUGHTY; when he was allowed to come again his uncle was at the point of death, so that there could have been no hospitalities to which he could have been invited.

Dr. KENEALY: But he was at Upton or Tichborne ever since he was a boy, and he was in the habit of making excursions from Stonyhurst.

The LORD CHIEF JUSTICE: Your Client says that Mr. MARKS gave him a hunting-coat, and that he paid a visit to Mr. SCOTT.

Dr. KENEALY: Well, those are two instances.

Mr. TAYLOR (Juror): I believe there are very few country gentlemen round Tichborne.

Dr. KENEALY: I think you are mistaken about that.

The LORD CHIEF JUSTICE: He really never lived in Hampshire.

[The Court adjourned at 4 o'clock.]

ONE HUNDRED AND FIFTY-THIRD DAY.—WEDNESDAY, JANUARY 7TH, 1874.

Dr. KENEALY resumed his address. He said: May it please your lordship, Gentlemen of the Jury—I told you yesterday I would present you with an analysis of the manner, peculiarities, and habits of ROGER TICHBORNE, and you will find the twitch mentioned as an almost constant habit. I have already, I think, read what BOGLE said with regard to that. MARKHAM says he had a habit of lifting his eyebrows, and used to employ himself in playing the French horn. The analysis of the evidence of the other Witnesses on this subject is as follows:

"A. BOGLE: ROGER CHARLES used to twitch his eyebrows about a great deal, but I think it was merely a habit of his own. He used to smoke a great deal. I believe he took snuff, but I never saw him. He was not fond of society; that is, his own class. Used to go a great deal with the gamekeepers or grooms.

"A. MARKHAM: He had a habit of lifting his eyebrows, when he talked to you particularly.

"H. WELSH: He was a mischievous young rascal. Very fond of a game.

"H. M. POWELL: Used to take plenty of snuff. He used to carry it in his waistcoat pocket loose.

"Mrs. E. BURT: He used to smoke a great deal, and was very fond of smoking.

"ELIZA ROPER: He took snuff.

"MARY WILLIAMS: A peculiar habit of raising the eyebrows.

"Miss BRAINE: Fond of playing with a knife at table. He was very shy, and talked little.

"T. MUSTON: He had a habit of twitching his eyebrows always.

"P. BAKER: Used to smoke common baccy sometimes, cut cavendish in the saddle-room.

"A. MINES: Had a habit of blinking up his eyes as if making game of one.

"P. CHICK: Habit of lifting his eyebrows—a sort of wink.

"C. LEWIS: Had a habit of always pulling his fingers.

"M. LEGG: He twitched his eyes when he was speaking, when he was smoking, and when he was snuff-taking.

"A. HOMER: He used a habit of twitching of his eyes when he was excited or pleased; anything, a very strange thing with his eyes.

"Lady ISABELLA BURRARD: His manner was perhaps French, because he had a great deal of manner for a young man of 20, he was more like three or four and twenty.

"MARY ANN NEALE: He was careless in his dress. He wore very nice clothes always, but he wore it carelessly. Careless. He did not have it fixed nicely. He did not look well. He had a dimple in the chin.

"ANTONY BIDDULPH: He was shy and awkward in his manner. I should say not formed manners.

"WILLIAM HEWETT: Had a habit of boxing and smoking on wet days.

"MARY FITZPATRICK: He had a habit of snuffing and smoking. He used to smoke with BURDON, the valet, on the housetop.

"P. HOGAN: He was a gentleman very much liked by the men, indeed very much beloved by the men. He was not at all the same as other officers in the regiment: sporting fellows, who liked to have a game of one thing and another. I never saw anything of that about him.

"THOS. MARKS: When he was talking it was a habit of winking. He could not speak to you, I think, without doing so.

"P. BARRY: He was a good-tempered young fellow, and everyone liked him.

"G. WILD: He would ride any horse in the regiment. He was fond of smoking and taking snuff too. I have seen his servant empty it out of his waistcoat pocket the next morning. I think he used to go to bed smoking. He was smoking whenever he had a chance. He was made a butt of in the regiment. He used to take a good deal of snuff. Sometimes he used to carry a box, and sometimes loose in his pocket. I have seen M'CANN turn tobacco and snuff and all out of his pocket when he brushed his clothes. Have seen big canisters for snuff in his room. He did not twitch so much unless he was speaking, but he would do it at any time. Almost anybody coming to speak to him, anything that would surprise him at the moment. The twitch was across the brow.

"TIMOTHY MARKS: He could stick on a horse well, but was a very indifferent military position. He never could turn his toes in.

"JOHN CHEETHAM: A nice young gentleman to speak to, and all that sort of thing. Pretty well liked in the regiment.

"JAMES CAIRNS: He was a very stupid gentleman at drill.

"Mrs. CAIRNS: I think he had a very easy sort of way; he was too easy.

"M. BURKE: He was a general favourite in the regiment.

"J. LESSWEARE: It was his habit to have his hair well brushed, and kept in good order.

"T. HOLMES: He was never no soldier, and could not go right-about-face when he left the regiment. Many a half-hour's extra drill have I had with him. He had a habit when he used to come to the stables. He would come three steps, and give a twitch, and turn right-about-face, and go out again.

"C. PHILLIPS: He was a very slovenly officer, I think. He was not fit for a cavalry regiment at all.

"W. MOODY: He had two or three different habits, as I remember perfectly, that was in the eyebrows. When you talked to him he had a great twitching, as if he got a little flurried. It was more so then. He got, you may say, more excited. The eyebrows worked when he was talking quick. Worked more than if he was speaking to you passively without any other remarks. He was a regular gentleman to his duties, but he often excited a laugh in the troop or regiment, wherever it might be, through his own way. He was very attentive to his duties, but used to excite a laugh by some peculiarity of speech or moving.

"THOS. RATCLIFF: He was always very heavy at drill. Dull.

"J. MANTAN: He was slovenly in figure.

"A. GODSMARK: He was a very quiet, shy sort of man. He was not at all a conversive man.

"JUDITH WOODMAN: He asked my father for snuff, and took several pinches of snuff from my father. He complained how his snuff, and tobacco, and pipe had been taken from his room.

"HELEN PEARCE: He used to have a pinch of snuff out of my father's box, and smoke a cigar, and sit and talk with him. He complained of having his pipe and snuff and tobacco taken from his room.

"Captain CUNLIFFE: I was in the habit of reading French literature with him. He was a better French scholar than I was. I decidedly always found him a truthful and honourable gentleman. He bore that character in the regiment. We read each other's books (French) more than we spoke it. We did not speak French much together. He used to drink a good deal—chiefly wine. He used to get into a stupid, soaked state. You never knew whether he was drunk or sober, at night after mess. He would be himself again in the morning.

"Colonel NORBURY: He used to sing in a sort of mild voice little French songs. *Cadet Rousselle* was one. He had a habit of driving pins into his legs. A man whose thoughts I should say were very difficult to get at. He was a man who did not communicate much. He was rather socially inclined. He liked his mess and liked to have you in his room in a quiet way after mess, but I never had much intimate conversation with him. No, he was not stupid. We used to say he stupefied himself with smoking too much very strong tobacco and taking large quantities of snuff. As to his habits of drinking, from my own experience I cannot say; I am sure I have not seen him intoxicated, but if I may say what I have heard I have heard that at the latter part of the time—I do not know when—but part of the time at Cahir, when I was not there, he took more than was good for him. As to his knowledge of military matters, my own personal belief was that he gave the word of command in a sort of parrot-like way, that he learnt as far as he could the words of command and shouted what he thought the proper word of command, which was very often wrong, and for that reason alone he came to me to be examined. It never occurred to me to ask him any questions with regard to his drill or anything about it, because I do not think there was the remotest probability of his knowing anything about his drill.

"E. HELSBY: He was dressed at Santiago, in a sailor's suit—more like a French sailor.

"WM. CLINE: At Rio with the Captain he used to be very free in drinking wine. He seemed to be a little fresh after it; not but what he could look after himself. He was not so bad as intoxicated, but a little merry like with it.

"Captain BROWN: He used to play billiards. He used sometimes to drink pretty heavily. He had a habit of scraping his nails."

These Witnesses, Gentlemen, give us an elaborate account of ROGER TICHBORNE very different to that given by the Witnesses for the Prosecution. It is of the utmost importance that you should bear in mind the many features in which ROGER beyond all doubt resembled this Defendant. A man cannot be convicted for want of memory. If so, I am afraid I should be in this Case—for I have made numerous mistakes, which my lord has kindly pointed out, and corrected—but these characteristics of the Defendant only change by growing with the growth, and strengthening with the strength. The Witnesses speak of the methodical habits of ROGER TICHBORNE, as well as of his frivolous and absurd habits, such as driving pins into his legs. We hear of jugglers doing so, and they get a living by it, but this is the first gentleman I think you ever heard of doing so. It is analogous to that habit of which the veracious Mr. STORES SMITH spoke as to the smoking of flies. But, as regards the methodical habits, you cannot have failed to observe them in the Defendant. He comes in every morning with his little bag, from which he takes his note paper, scissors, knife, envelopes, and pocket dictionary, without which he never travels, and he has everything about him with almost military precision. Unhappily, only too many of the Witnesses speak, as you have observed, to the habit of drinking and smoking to excess which ROGER TICHBORNE so early acquired and so long pursued. He was stupefied, say the Witnesses, by strong tobacco and too much wine. You will say whether that habit did not cling to him in South America

and whether it does not account for many things which are otherwise inexplicable in the conduct of the Defendant. I hoped, Gentlemen, that I should not have had to trouble you again as to the tattoo theory. I thought after what I had said and proved on the subject, it was dead and buried; but as some of you seem to entertain some doubt upon the matter still, I feel I am in duty bound to say a little more in respect of it, and to present to you an analysis of the evidence which I have given on the subject. I say that the inventors of the tattoo theory were BOWKER, SEYMOUR, and Lord BELLEW. I have already pointed out to you that it was on the 6th of June the Defendant was asked to expose his arm. That was the time the discovery ought to have been made which, if true, would have overwhelmed him with guilt and confusion, but they did not do so. They had his arm bare, and yet they said nothing whatever about tattoo marks. What I say is that between that time and a later day this tattoo theory was concocted by those three individuals. ROGER, no doubt, had the foolish and, as it has turned out, the unfortunate habit of painting these things on his arm and exhibiting them in a mischievous spirit; and these persons have taken advantage of that piece of silliness. I always associate these three characters in my mind with the three Witches in "MACBETH" over their cauldron, brewing poisons for the Defendant. (Laughter.) You know that the theory is that the tattoo marks were made with gunpowder. But gunpowder would have produced swelling and ulceration, which would have continued for a considerable time. Do you believe that the tender Mother of that tender child if he had had his arm ulcerated by gunpowder would not have known of it—would not, at least, have heard of it? Lady TICHBORNE watched over ROGER only too carefully. It might have been better for him if she had not.

A JUROR: I never heard of a sore being produced by the use of gunpowder in that way.

Dr. KENEALY: There must be a sore when gunpowder is used.

The LORD CHIEF JUSTICE: Is there any evidence of gunpowder having been used?

Dr. KENEALY: Lord BELLEW stated that it was done with gunpowder.

The LORD CHIEF JUSTICE: Is there any evidence that tattooing produces ulceration?

Dr. KENEALY: Unquestionably—from gunpowder.

The LORD CHIEF JUSTICE: You say unquestionably; but where is the evidence of it?

The FOREMAN: I never heard of such a thing.

Mr. TAYLOR (Juror): I was tattooed but no such thing occurred.

Another JUROR: Gunpowder is used for healing purposes in many cases.

Dr. KENEALY: Well! wonders will never cease!

The LORD CHIEF JUSTICE: ROGER told people that it did not hurt him. I don't believe it produces ulceration. You do not mean that sailors complain of it?

Dr. KENEALY: I think, if your lordship asks any of your own sailors, you will hear that it is so.

The LORD CHIEF JUSTICE: If I had known you were about to start that theory, I should have done so.

A JUROR: It produces a certain amount of soreness, but nothing to speak of.

Dr. KENEALY: Gentlemen, tattooing a hardy sailor is a very different thing from tattooing such a person as ROGER, who was a tender boy.

The LORD CHIEF JUSTICE: He was not a tender boy at the time when it is stated to have been done, for he was then 15 years old.

Dr. KENEALY: We have had evidence that the issue produced great soreness.

The LORD CHIEF JUSTICE: The issue was stopped when he was nine years old, and the tattooing is stated to have been done when he was 15; so that there was plenty of time for him to have recovered.

Dr. KENEALY: I contend, Gentlemen, that a tattoo on a delicate lad of 15 would be very different from a tattoo on the brawny muscles of a sailor. I am, I must say, taken aback by hearing that tattooing by gunpowder does not produce ulceration. You will, however, exercise your own experience and knowledge on the subject. You will remember that the splotch Lord BELLEW spoke of as being just above ROGER'S wrist and about the size of a fourpenny piece, exists on the arm of the Defendant. While I am on him, let me remind you that CHATILLON was one of the Witnesses as to the tattoo. You remember that BELLEW says that ROGER read "ÆSOP'S Fables" and "XENOPHON" in Greek. The Greek is in both cases very hard, and especially in that of "XENOPHON."

The LORD CHIEF JUSTICE: Does not that depend very much upon what part of XENOPHON'S works it is? The "Anabasis" is simple enough.

Dr. KENEALY: I did not find it simple enough; there are so many military terms in it. Mr. HAWKINS told us in his Opening Speech that CHATILLON tried to teach ROGER English. CHATILLON would not have done that unless he knew English, and why, then, was he examined here in French?

A JUROR: He was examined in English.

Dr. KENEALY: Oh, no, unless I have lost my senses in this Case—perhaps I have.

The LORD CHIEF JUSTICE: My present impression is that he was.

Mr. Justice LUSH: I think he was examined in French through an interpreter, but said he understood a few words of English.

Mr. MCMAHON: He was examined through an interpreter.

The JUROR: Then I am wrong.

Dr. KENEALY: I have made so many mistakes myself that I can well excuse you, sir. Now if he knew English well enough to try to teach it to ROGER, it was hardly decent or honest for him to be examined, as he was here, through an interpreter. Mr. HAWKINS, however, conveyed to you the idea that CHATILLON knew English. You remember how the eyes of the Witness were rivetted on Counsel when the question was put in English and before it was repeated in French, conveying the idea—as it did undoubtedly to some of the Jurors—that he knew English well. Would not an honest Witness have been, under the circumstances, examined in English? But CHATILLON and his wife support my theory that the marks were constantly changed by ROGER. The one drew one form as representing the marks he saw, while his wife next day drew another and a very different form. Madame CHATILLON, indeed, seems to have been imported into the Case merely to speak to the tattoo marks, and you are asked to believe that this shy young man, who only saw her twice in his life, volunteered to draw her attention to the marks on his arm. Then we have Père LE FEVRE, who also knew English perfectly well. Was it not a farce to have examined him through an interpreter?

The LORD CHIEF JUSTICE: I have acted during this Trial, and should again act, on the principle that unless Witnesses are perfect in the language of the country where they have come to be examined they have a right to be examined in their own language. It is one thing for a foreign Witness to understand what is said, and a very different thing for him to be able to answer interrogations in the language spoken.

Mr. Justice LUSH: I have always acted on that principle with regard to the examination of Welsh Witnesses living near the border, and not speaking English perfectly. Foreigners are in the habit of thinking in their own language.

Dr. KENEALY: It is not for me to question the wisdom of your lordship's practice; but I should have thought that a distinction might be made between an educated and an uneducated person. It is, I think, an indication of unfairness when an educated Witness resorts, as it were, to the shield of his native language. This Witness does not give evidence of any value. If the marks represented sacred symbols, a priest would have recollected them; but he says, "I have no idea what they were, but still some recollection." Nothing could be more indefinite than that. When pressed as to his recollection, he said, "I have already said that he showed me"——what? He mentioned nothing. "What did he show you?" I asked. "He showed me less than he intended." This man tells us nothing at all; but you are asked to infer a number of things from what he chooses to say. Gentlemen, this Witness was followed by another priest. I need not call attention to the smooth way in which these French ecclesiastics gave their evidence. I hope, Gentlemen, that that smoothness will not operate on your minds to lead you to think they are the innocent lambs they would have you believe. These people have been very well described in an old Leonine verse, written probably by one of their own monks:

"Mel in ore, verba lactis,
"Fel in corde, fraus in factis."

The Defendant, unhappily for himself, has had experience of French and English and Irish and South American priests and monks; and I hardly wonder that he has lost faith in a religion which produces such. Gentlemen, I will not go through the Witnesses for the Prosecution on this subject. I have already done so. I ask you to remember the false evidence given by some of them—the inconsistent evidence given by others; while I invite your attention to an analysis of the evidence of the 35 Witnesses I called, and who swore that ROGER TICHBORNE was not tattooed.

The LORD CHIEF JUSTICE: *No, no; they have sworn nothing of the kind. They have only sworn that they did not see any tattoo.*

Dr. KENEALY: But that if they were there they must have seen them. That I think justifies me in saying that they swore he was not tattooed.

The LORD CHIEF JUSTICE: It justifies the deduction, not the positive statement.

Mr. TAYLOR (Juror): The Prosecution, I think, called about thirty as to the tattoo-marks.

Dr. KENEALY: I am told by my friend Mr. COOPER-WYLD that they called twenty-five, of whom seven could not speak to the tattoo marks. The first Witness I called was WM. BAILEY, an innkeeper. He saw ROGER TICHBORNE, bare-armed, wheeling the barrow to the cairn, and he saw no tattooo marks. Bear in mind, Gentlemen, that Colonel GREENWOOD was working with ROGER at the cairn, and he saw no tattoo marks; and also that Mrs. GREENWOOD saw ROGER bare-armed, and saw no such marks, or any other. You will remember, too, the position which ROGER TICHBORNE occupied in the county. He was to be the lord of large estates—a kind of little king in the locality; and if tattoo marks existed everyone about would be anxious to see the marks on the young master's arm. BAILEY was subjected to a severe cross-examination, but his testimony remained unshaken; and

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he not only saw ROGER working at the cairn, but he saw him again with both arms bare, grubbing up the roots and stumps of trees. What nonsense it is, then, to say that if ROGER was tattooed the Witness would not have seen the marks! CHARLES GUY was my next Witness. He, too, had seen ROGER'S arms bare more than once when fishing and when grubbing up roots, and he saw no marks—"not the slightest whatever;" and he says he often saw tattoo marks on soldiers and sailors. The next Witness is HENRY NOBLE. He saw ROGER in the year 1849 many times grubbing up the stumps and roots of an oak tree. His arms were bare, and there were no tattoo marks on them. WILLIAM MANSBRIDGE gave substantially the same evidence. He had many opportunities of seeing ROGER'S bare arms when he was making bullets in his room, and he never saw tattoo marks on them. THOMAS LILLYWHITE also saw ROGER grubbing the oak bare-armed, and saw no tattoo marks. ANDREW BOGLE, also with ample opportunity, if any man ever could have, of seeing and knowing whether ROGER was tattooed, positively negatives the tattoo theory. But we have the name of the famous Dr. LIPSCOMBE mentioned in the cross-examination of BOGLE. Gentlemen, if Dr. LIPSCOMBE could have proved the tattooing, why did they not call him?

The LORD CHIEF JUSTICE: You have Dr. LIPSCOMBE'S evidence. Do you not know why they did not call him?

Dr. KENEALY: I really do not, my lord.

The LORD CHIEF JUSTICE: Then you ought. The Defendant here called him last time. Why should the other side call him now?

Dr. KENEALY: I should have thought the Prosecution would have availed themselves of the evidence if they thought him true or honest.

The LORD CHIEF JUSTICE: But if the Witness swore one thing one day and another thing the next?

Dr. KENEALY: That excuses me at least for not having called him. There was nothing to prevent the Prosecution not calling him.

The LORD CHIEF JUSTICE: Would they not naturally expect that you, having called him before, would call him again? And just see what his testimony is. He stated one thing one day and the next day he stated another. I admit that what he stated the first day he stated out of Court, but when you have a Witness saying a thing out of Court wholly inconsistent with what he says in, I can quite agree that he is a Witness that neither side can place any great reliance upon.

Dr. KENEALY: What I complain of is that Mr. HAWKINS, by his question, insinuated that Dr. LIPSCOMBE gave evidence that ROGER was tattooed which he did not. Then there was the further unfair insinuation that BOGLE had endeavoured to induce other persons to swear that ROGER was not tattooed; but he distinctly swore that he never spoke to any one on the subject until he entered the witness-box; adding, however, that he had been asked about the tattoo marks by strangers who stopped him in the street. Who are those strangers who stopped old BOGLE? I wonder if that pretended ORTON who appeared in Wapping flourishing his £50 notes was one of them? Who were they? They were no friends of the Defendant at all events. I complain of these strangers in the streets. I do not like them.

Well, Gentlemen, CHARLOTTE GRANT is the next Witness upon the tattoo marks; and she also negatives the assertion that ROGER had marks on his arm, although she had seen his arms bare more than once when he washed his hands and arms in her kitchen. She had seen no tattoo marks on his arms, although she must have done so if they had been there. Serjeant PARRY, who apparently had never fished in a moat, cross-examined this Witness. (Laughter.) In answer to him, she said she had seen ROGER wash his hands in the manner she had described at least half-a-dozen times in 1850, but whether it was in the spring, summer, autumn, or winter of that year she could not say. On one or two occasions he had asked her to turn back his shirt sleeves, and once she rolled them over his elbows. "Why," she was asked, "did he he ask you to roll up his sleeves?" and she gave the natural reply, "Because his hands were dirty." MARTHA LEGGE comes next. She is the woman who used to be called "the pretty laundress from Bath." She says she had seen ROGER cleaning his gun in the butler's pantry frequently, and on those occasions he would have his shirt sleeves rolled up and his arms bare to the elbows. That there were no tattoo marks on his arms she was quite positive, for if there had been she could not possibly have avoided seeing them. This woman was cross-examined by Mr HAWKINS, and in reply to him she said she had seen ROGER washing his gun under a tap on the sink in the butler's pantry at least a dozen times. She was generally talking when in the pantry, she said, and you, Gentlemen, are going to be asked, I suppose, to believe that she could not see him cleaning his gun because she was talking. In reply to the Lord Chief Justice, the Witness said ROGER used to clean his gun in the evening. Of course it would be in the evening, because it would be after he came home from shooting. So much for the cross-examination of this Witness on the subject of tattoo—all, as you see, ending in nothing. MARY ANN NEALE, a chambermaid, speaks of ROGER TICHBORNE and Mr. SPURLING having been thrown from a dog-cart, and to subsequently seeing the former wash his hands. She saw his arms, but did not observe any tattoo marks upon them, although if they had existed she must have noticed them. In cross-examination, she said she saw his arms bare to the elbow, and also that she had seen other gentlemen wash their hands. The Prosecution seemed to be horrified at this, as though the woman had been guilty of the greatest indecency in seeing gentlemen wash their hands, and she is cross-examined upon this remarkable sin at some length. JOSEPH MUNDAY, Orderly-Sergeant in the Carabineers, said he had had occasion to go to ROGER TICHBORNE'S quarters frequently, and had seen him with his arms bare to the elbows several times. He had seen no tattoo marks, however, and he was certain that he must have done if there had been any. This Witness was asked, in cross-examination, whether he had not been reduced to the ranks, and he replied in the affirmative. We know, Gentlemen, that men are reduced for very slight causes sometimes, and I ask you to bear in mind that MUNDAY was not asked how he came to lose his rank as Sergeant. Nothing was elicited from the Witness in cross-examination damaging to his statement. GEO. WYLD said he had seen ROGER TICHBORNE playing at rackets, quoits, and cricket at Canterbury, and had seen him with his arms bare frequently. He had himself often tucked up ROGER'S sleeves, and tied boxing-gloves on his hands, but on those occasions he had never noticed tattoo marks, which he must have done if they had existed. This man in cross-examination said he had never seen scars on ROGER TICHBORNE'S arms. That was very likely, because scars are not plainly discernible but a tattoo mark would at once strike the eye, both from its colour and singular nature. WM. TRY says he has seen ROGER TICHBORNE play cricket, fives, quoits, and rackets at Canterbury. He had seen his arms bare as he was washing himself in preparation for dinner, but had seen no tattoo marks, and thought there were none. He had a fellow-servant who was tattooed, and this was a fact so impressed upon his memory that he never could forget it, and that would have been the case if he had seen tattoo marks on ROGER TICHBORNE'S arm. I don't know whether you have remarked it, Gentlemen, but almost every one of these Witnesses repudiated with indignation the tattoo, as though they thought it should never have been introduced into the Case; and I can well understand this feeling and their indignation at its being said, and persisted in, that ROGER had these marks, when everyone knew he had not. In answer to the Counsel for the Prosecution, the Witness said he had seen ROGER TICHBORNE stripped for washing frequently, though he did not remember what had taken him into that gentleman's room. He had gone there, and also into other gentlemen's rooms, on many occasions when sent for. He used to answer their bells sometimes. WM. DAVIS follows next in order. He is asked, "Could you see his arms?" and he says "Yes;" and you will remember that the occasion on which he did so was when he went into ROGER TICHBORNE'S room to get three half-crowns for a fighting cock. The Witness continues: "He was washing and talking when I saw him, preparing for mess. I saw no tattoo marks on his arms, which were perfectly bare. I have a tattoo mark on my hand, and if any medical man can remove it without leaving a scar he is welcome to try." The Witness was talking to ROGER about twenty minutes, and during half that time he (ROGER) was washing. This Witness, also, was unshaken in cross-examination. He said he had only seen ROGER'S arms bare on the one occasion; at least, he could not swear to the absence of tattoo except on that occasion. TIMOTHY MARKS is the next Witness. He speaks of ROGER racing at Cahir with his shirt sleeves rolled up. This young gentleman, a deep theological student at the time, according to STORES SMITH, took part in all jollities and jollifications of the races. It is delightful to see how he blended theology and cock-fighting and racing in this country town. It must have given the Irish people a nice opinion of the ordinary occupations of young English gentlemen. MARKS says he saw ROGER'S bare arms, but did not notice any tattoo, which he must have done if it had existed, and JOHN LESSWARE gives similar evidence, but his cross-examination is not worth attending to. JOSEPH BRITTLEBANK, now a drill-instructor in the Worcestershire Yeomanry Cavalry, said he had been in ROGER TICHBORNE'S room when he was washing. He (Witness) was Orderly-Sergeant, and ROGER was Orderly-Officer. ROGER was washing, and he saw his arms, but did not observe any tattoo marks. WIYLIAM BIRD, who used to be servant to Col. NORBURY, was the next Witness, and he deposed in cross-examination in chief that he had seen ROGER'S bare arms on one occasion when old Mr. TICHBORNE had been visiting his son at the barracks and had left.

The LORD CHIEF JUSTICE: I appeal to you, Dr. KENEALY, whether you will rely on the evidence of that Witness? Mr. JAMES TICHBORNE writes from Dublin on the 13th September, 1850, saying that his son had obtained leave from the Colonel, and had gone with him to the station; whereas the Witness says he went with him to the station, and that Mr. JAMES TICHBORNE told him to get a sovereign from his son. The letter of the father proves that the son went with him.

Dr. KENEALY: The man may have got into some confusion.

The LORD CHIEF JUSTICE: He says he was sent back from the station by the father to the son; the father says his son went with him.

Dr. KENEALY: I don't think I should be justified in giving up the Witness for a mistake of that kind. It may be said that what he has deposed with reference to the father and the son is inaccurate, but I should hesitate a long time before I admitted he was the Witness of untruth. If once I have to give up a Wit-

ness because of inaccuracy with reference to dates or anything of that kind, I may as well give up my whole Case.

The LORD CHIEF JUSTICE: How do you test the truth of a Witness who gives you circumstantial detail which, you might say, carries conviction with it because of its circumstantiality, if he speaks of circumstances having taken place at a certain time when we know they could not have occurred?

Dr. KENEALY: I should be sorry to say that he is telling an untruth because his memory fails him on a certain point. I am too conscious of failure of memory in myself to do so. I have often made mistakes with regard to dates and things of that kind, and no doubt each gentleman on the Jury has done the same; therefore I know that great allowance must be made to Witnesses in such matters. I may go to the opposite extreme, and make too many allowances, but you must judge of that.

The LORD CHIEF JUSTICE: But supposing a man's memory is such that in a material fact he is clearly wrong, how can we rely on the rest?

Dr. KENEALY: We must strive to separate the erroneous part from that which is true—always supposing the Witness to be one who means right.

The LORD CHIEF JUSTICE: I concur in a great measure with what you say, but it seems that the only opportunity the Witness had of having a conversation with ROGER TICHBORNE, and examining his arms, hangs upon a circumstance which is wrongly related—in fact, which never took place.

Mr. Justice MELLOR: I believe in a great deal of what you say, supposing a man has forgotten the particular occasion; but the difficulty here is that the only opportunity he had of seeing the bare arms was when Mr. TICHBORNE, as he says, was giving him a £20 note to get changed.

Dr. KENEALY: The Witness may have mistaken one occasion for another. He gives a description of the room in which he says he saw ROGER TICHBORNE, and points out the place where the washandstand was; and, further than that, he describes the appearance of the gentlemen who were there. That he is in a confusion as to the date at which this took place may be: but possibly he may be confounding the date of old Mr. TICHBORNE'S departure with his son with the date of the return of ROGER. He says he saw ROGER'S arms bare, but observed no tattoo marks on them. CHARLES PHILLIPS is the next Witness. He deposed in his examination-in-chief that he had seen ROGER'S arms bare whilst he was playing rackets, and he is sure there were no tattoo-marks upon them. This Witness was not cross-examined, but the Bench did not think he was so obscure a Witness as not to be worth questioning. They put questions to him, but of these I do not complain. GEORGE ELLA says ROGER TICHBORNE used very often to come and ask for his servant THOMAS, and sometimes for water in his shirt sleeves. I must remind you, Gentlemen, that they are not so particular with regard to dress in barracks; and that not only the men, but the officers also, at times go about in their shirt sleeves. The Witness says he saw ROGER'S arms more than once, and they were not marked by tattoo. Practically, nothing is elicited from this man by Mr. HAWKINS in cross-examination that would, in the least degree, justify you in saying that he was not a credible Witness. JEREMIAH COLE also says he has seen ROGER TICHBORNE washing, and that he had no tattoo marks on his arm, which marks he must have seen if there had been any. The cross-examination of this Witness would suggest to one's mind that the argument of the Prosecution will be that the marks were hidden by the towel TICHBORNE was using. But that has only to be mentioned to you, I am sure, to impress you with its weakness. The next Witness is HENRY HAINES, who said he remembered Mr. TICHBORNE having a little sparring at Portobello. He assisted him by tying the gloves on his hands. If ROGER had been tattooed the Witness says he must have seen the marks, and mentioned it to the troops, because, in fact, he and his comrades used to notice all these little things. Gentlemen, I submit to you that there never was stronger evidence than this. In cross-examination, the Witness said this was the first occasion he had ever been questioned with regard to the tattoo, for it was not until the end of the first Trial, you know, that the Defendant's advisers had occasion to look into the matter. The Witness went on to say, "At that time, when I saw him boxing, they used to make a fool of this TICHBORNE," and you will bear in mind that he was speaking in this contemptuous manner in the presence of the Defendant to whose identity he came to speak. THOS. RATCLIFFE was another of those Carabineers. His evidence on the subject of tattoo was to the effect that he used to assist ROGER TICHBORNE'S servant in his work, and he had seen ROGER washing with both his arms bare. He knew what tattoo marks were, but there were none on ROGER'S arms, and if there had been he must have observed them. He had seen ROGER naked in his bath, and he describes that gentleman as having been an excellent swimmer. Nothing is said about the tattoo in this context, however. Mrs. SARAH ELLA, who is the next Witness, says she has seen Mr. TICHBORNE'S arms bare so often that she is certain she must have noticed the tattoo-marks on his arms if there were any. She was not very much damaged by Serjeant PARRY in cross-examination. WILLIAM HEWITT, on the subject of the tattoo, said he used to spar with ROGER TICHBORNE sometimes in the room over the harness-room. They used to have their shirt sleeves rolled up to the shoulder. ROGER had no tattoo-marks on either of his arms. He was cross-examined at considerable length by Mr. HAWKINS, and he said that they used to wear Mr. ALFRED SEYMOUR'S gloves, and the boxing took place sometimes in the presence of several stablemen. He says he did not see tattoo marks on ROGER'S arms, and, therefore, was sure there was none. Then he is asked, "Give me the name of a single individual who ever saw you sparring with ROGER TICHBORNE?" and he replies, "I do not recollect the name." I again complain that all my Witnesses throughout this Trial have been treated as though they were downright wilful perjurers. This Witness was cross-examined, as the question I have quoted shows, as though he was telling a deliberate lie. In reply to the Lord Chief Justice he said ROGER TICHBORNE did not spar well; but in reply to Mr. Justice MELLOR he said he was a good shot, as this Defendant is. I pass from WM. HEWITT to Captain CUNLIFFE. He was formerly Captain in the Carabineers, but is now a country gentleman, living in Cheshire. He tells us he and young TICHBORNE were a great deal together, having the same desire for French study; but Capt. CUNLIFFE was not introduced to the same theological researches as ROGER was. This Witness said he had fenced with ROGER repeatedly; but he could not say positively that they used to bare their arms when they engaged in that amusement. He could not swear that he had ever seen ROGER'S arms bare or his shirt sleeves rolled up, but he had never seen a tattoo upon him. This evidence is not strong, but I do wish you not to dismiss it, inasmuch as it is said ROGER TICHBORNE was in the habit of showing his tattoo marks, and if that were so, is it not likely that he would have shown them to Captain CUNLIFFE? It is probable that they would fence with sleeves rolled up, although the Witness does not remember whether that was so, and the marks must have been seen and remarked upon. Thus MUSTON, who was once in the service of Sir EDWARD DOUGHTY—a smart, active specimen of a gentleman's servant, a beau ideal of a valet, and used to be in the service of ROGER—speaks to the absence of tattoo. You will be asked presently to say that this man is a liar, and I therefore beg you will thoroughly examine and weigh his evidence. He is cross-examined by Mr. HAWKINS, and he says he used to see ROGER bare-armed two or three times a day sometimes. He is asked, "Do you mean to say that you remained in his room while he was washing?" and the question is put as though the suggestion that the valet had been guilty of such an enormity had taken away every one's breath, but the Witness did not seem to see that there was any harm, any blasphemy, or burglary in that—(laughter)—and he answers simply, "Yes." He says further that he has seen him with his shirt off, and in that condition, Gentlemen, no doubt, every valet in the country has seen his master.

The LORD CHIEF JUSTICE: *Do not say that*, Dr. KENEALY.*

Dr. KENEALY: Well, I should think so, at all events. Lieut.-Colonel NORBURY comes next—a man so conscientious that I believe he would rather have died in the box than state a word in favour of the Defendant that was not true. He says he has seen ROGER TICHBORNE "with nothing on as regards the upper part of his person but a shirt jersey," and he afterwards says, "I am sure I have seen his arms bare. I perfectly remember having done so on one occasion, but I never saw the tattoo marks." Do you believe it possible, then, that they could have existed? If they had, would he not have remembered it, and have stated the fact to you?

[The Court then adjourned for luncheon.]

On resuming,

Dr. KENEALY continued: Gentlemen, Colonel NORBURY says—"I have not seen, to the best of my recollection, a tattoo, and I feel pretty nearly certain that if I had seen it I would have recollected it." He adds that he never heard of it till it was mentioned at the last Trial, but I put it to you whether, if ROGER TICHBORNE had had tattoo marks representing the symbols that have been alleged, it would not have been a standing joke against him in the army, and whether it would not have been quite impossible for Captain CUNLIFFE and Colonel NORBURY not to know it? Serjeant PARRY did not cross-examine Colonel NORBURY as to the tattoo marks, but for what reason I don't know. ANN MINES is the next Witness. She says Mr. TICHBORNE often came into the kitchen when she was there. He used to come there and wash his hands. On one occasion she actually helped him to tuck up his sleeves, and yet she never saw any tattoo marks. WM. ROBINSON comes next. He speaks of there being a green opposite the Officers' quarters at Portobello barracks, and says he has seen Mr. TICHBORNE playing at skittles with the Officers. They used to have their coats off and their sleeves rolled up above the elbow. He thinks he must have seen any tattoo marks if they were there. I am rather curious to know how my tattoo evidence is to be upset. I know there is no end

* The Chief Justice spoke this as if he were profoundly shocked by the Counsel's statement. But Master F. COCKBURN told Dr. KENEALY that in the preceding autumn, when the Chief Justice recruited himself from Friday to Sunday in sailing about in his yacht, the *Zouave*, he used to walk the deck every morning before breakfast, and have buckets of sea-water thrown upon him by the sailors, while he was in a state of nudity. "And after this" added Master F., "it was amazing to see what a breakfast he would eat." Yet he affected to be greatly shocked at the notion of anyone being seen by his valet without a shirt!

to the ingenuity of the human mind, but how this will be met I do not know. Captain BROWN is the next on the question.

[Here there was considerable laughter in Court, and the Defendant was heard to complain to his Counsel that Mr. BOWKER was laughing.]

Dr. KENEALY: Why should not Mr. BOWKER laugh if he likes? I am not an Eastern Emperor to say who should laugh and who should not. Everybody is at liberty to laugh.

A JURYMAN: I was laughing.

Dr. KENEALY: I know of no law to prevent Mr. BOWKER from laughing if he wishes to. This is a free country.

A JURYMAN (to Dr. KENEALY): I thought you were laughing too?

Dr. KENEALY: Oh, no. I have no doubt that you consider Captain BROWN a very bad man. At present I am only going to touch upon the question of the tattoo, but when I come to the other portion of his evidence, perhaps you will look upon it in a different light.

The FOREMAN: He saw LUIE at Rio.

Dr. KENEALY: That has already been intimated to me by you, sir, as a ground for believing him a false Witness; but you will hear from me presently what my view on that is, and I hope you will suspend your judgment until then. As to the tattoo head of evidence, Captain BROWN's testimony is that when at Rio Mr. TICHBORNE stayed on two occasions in his room at the hotel, and that he saw him in the bath in the morning, and never saw any tattoo marks. There were a great number of questions asked in cross-examination of this Witness as to the bathing; and it was suggested that it could not have been as the Witness describes, because, first of all, doubt was thrown on the statement that there were baths in the hotels at Rio; and, secondly, it was insinuated that it would have been one of the most horrid, indecent, and wicked things for ROGER TICHBORNE to have allowed any fellow-occupant of the bedroom to see him in the bath. I don't think much of this. When people go out to foreign parts, or even when they rough it at home, I don't think it is unusual for such a thing to happen. Yet this is all that is practically brought out about the tattoo. It is suggested that it was really improper, and even impossible that one man should bath in sight of another. Why, Gentlemen, if any of us in the summer time walk up to the Serpentine in the morning we will find plenty of people with quite as much delicacy of feeling as ROGER TICHBORNE stripping themselves stark naked and going into the water. Some do so even in their yachts. There may be some of you who do not believe Captain BROWN—you will hear by-and-bye what I have to say regarding him. Meanwhile, I will only remark that he knows a great many things he could not have known without being at Rio, and that he was there I regard as equally certain. There are facts you will not easily get over, and that will go far to make up for the weak point in his evidence, that he recognised the Witness LUIE as being known to him out there. MARGARET HORNIBROOK comes next. She was the wife of a private in the Carabineers, who had been a servant to Captain CAMPBELL. Mr. TICHBORNE and Captain CAMPBELL were friends, and the former was in the habit of going to the latter's rooms, which were just opposite to his. This Witness says she had seen Mr. TICHBORNE with his sleeves turned up, drying his arms after washing. She never saw any tattoo marks, and she thinks she would have seen them if there had been any. Mr. Serjeant PARRY did not cross-examine this Witness, but I don't know if it was because they have given up the tattoo theory. Mr. THOMAS RICHARD HOFFLAND, the gentleman who taught him drawing at Stonyhurst, is the next Witness on this subject. He did not see ROGER's arms bare, but if he had had any tattoo marks I submit it is likely he would have shown them to him as well as to others. CHARLES LEWIS comes next. He says he saw ROGER's left arm when he was plastering and bandaging it after the accident that happened to him on the Downs, and he did not see any tattoo marks. He was cross-examined as to the time at night it was when he saw the arm bare, and I suppose it is to be alleged that because it was moonlight he could not see the tattoo marks. That is a view I am quite willing to have put before you; it will not disturb me in the least. ANGELINA HOMER says she has seen him in the scullery at Tichborne with his arms bare, and never noticed any tattoo marks. She is the last of the thirty-five—or rather thirty-four—Witnesses who say they had opportunities of seeing his arm bare, and never noticed any tattoo marks; and in what way any opponent of the Defendant can get rid of this evidence I confess I cannot see.

Having established, as I hope I have, that ROGER TICHBORNE had no tattoo, I now call your attention to the evidence for the Defence. The number of Witnesses who have been called upon the subject of the identity of this gentleman with ROGER TICHBORNE is really very enormous. There are two Witnesses who knew ROGER TICHBORNE from his childhood in Paris up till the time of his leaving England, and who identify the Defendant as that ROGER. There are two Witnesses who knew ROGER at Stonyhurst, and prove incidents connected with his life there, and who identify the Defendant as that ROGER. Of the Witnesses who knew ROGER at Tichborne and elsewhere in the neighbourhood, there are no less than thirty-five, all of whom identify the Defendant as being ROGER. Of those who knew ROGER on his visits to Upton and who identify the Defendant there are no less than nine. Of the Witnesses who knew ROGER elsewhere in England—namely, at St. James's-place, Kensington, Bath, Clifford, and Southampton—there are six, all of whom identify the Defendant. Of the Witnesses who knew ROGER in the army there are no less than 69 who identify the Defendant as ROGER. There is one Witness who knew ROGER while he was with the Carabineers in England, and saw him afterwards at Sydney. There are two who knew ROGER at Santiago and in Chili, and identify the Defendant as the gentleman they knew there. There are two who knew him at Rio, and who identify the Defendant as the same person. Then there are 14 Witnesses who prove the 'Osprey'; but I don't think it necessary to go into that, for I think I have sufficiently established the existence of the 'Osprey.' Then there are Witnesses who spoke to the gold fever, but that also I think you will agree has been proved. There is one Witness who speaks to seeing this Defendant in the Black Forest near Melbourne in 1858, and to having known him as ROGER. There is one Witness who proves that the Defendant is a good fly-fisher, and there is no pretence for saying ARTHUR ORTON ever learned fly-fishing. There are three Witnesses on what is called the Brighton card-case. I confess they are not strong or powerful Witnesses; but still they give evidence material to the Case. There were also several Witnesses to the Poole election; but what they could say was of the nature of hearsay evidence, and therefore inadmissible. I have to speak first of those who knew him at Paris. One of these is BOGLE. He says something about the Order of the Blue. I have not been able to give strong evidence as to it, but neither has the evidence given by the Prosecution been of a nature to deserve much attention, and I think BOGLE's description of the dress ROGER wore goes to a certain extent to justify what the Defendant said. Then BOGLE gives a perfectly natural account of his meeting with the Defendant in Australia, and, unless you look upon BOGLE as an incredible Witness, the Defendant there gave proofs of identity which it is impossible to get over. He asked BOGLE about his two sons, about the GODWINS, about the brothers GUY, and about ETHERIDGE, the blacksmith, and also inquired if he remembered going out shooting with him and BRAND, the gamekeeper; and I submit that no one but the real man could have known to put these questions. On the question of coaching, BOGLE has distinctly denied that he has ever given the Defendant any information, or that the Defendant has ever asked him for any. At first I thought the Defendant must have made a mistake in saying BOGLE used to be the gamekeeper, but BOGLE says he really held that post. When first he saw the Defendant, BOGLE thought he was not so much like ROGER as he was like his uncle Sir EDWARD; and if Lady RADCLIFFE is at all like her father, I am not astonished at that. He was asked if the Defendant had told him anything about the shipwreck, but the reply showed that what he had told him was very little. Now, an impostor would certainly have had a good story ready, to excite the sympathies of so valuable a Witness. Mr. HAWKINS, in his cross-examination, seems to think that BOGLE, like the Defendant, has resorted to the dyeing of his hair—on the theory, I suppose, of like master like man; but BOGLE shows there is no foundation for it, and I look upon all this as mere rubbish. Then a great deal is made out of the Defendant's sending BOGLE to see if the pictures were in Tichborne Hall as he had left them; but this is accounted for by the Defendant's annoyance at the prospect of their being sold, and his knowledge of them was shown by his asking BOGLE if the QUEEN'S picture was still there. How could an impostor from Wapping know there was such a picture?

The LORD CHIEF JUSTICE: He had the catalogue to see.

Dr. KENEALY: But the pictures were sold.

The LORD CHIEF JUSTICE: No; they were not sold.

Dr. KENEALY: Well, I would like to have seen the catalogue. They could easily have produced it, and they have not done so. I don't know whether your lordship has seen it?

The LORD CHIEF JUSTICE: Oh, no.

Dr. KENEALY: Then do you think we should assume that picture was in it? It seems to be probable that such pictures as the QUEEN'S and the Dole would be treated as heirlooms and would not be sold.

The LORD CHIEF JUSTICE: But the collection was not a large one; and if the principal pictures were omitted I do not know what there would have been to sell. I suppose that what happened was this: the hall was in the hands of the sheriff's officers, and the effects of Sir ALFRED were advertised for sale; but it was afterwards discovered that they could not be sold, and so they remained.

Dr. KENEALY: We have been often cautioned against assumptions; yet we are now told to assume the contents of a catalogue which has not been proved. I still think the catalogue should have been produced. BOGLE appears to me to be as true and honest and sincere a Witness as could be, and, unless you disbelieve him, his evidence is insurmountable. The other Witness who knew him from early childhood is ANN MARKHAM, and she noticed a resemblance in the Defendant to Sir HENRY TICHBORNE. She speaks to several features, and amongst others to the peculiar thumb. Of the Witnesses who knew him at Stonyhurst, the first is HOFFLAND, who tells us that, in reply to questions, he mentioned to him several things which he could not have easily been coached in, such as that the name of Witness's partner was HILL; that there had been a Mr. SEGUR in the neighbourhood, who had a good collection of paintings; that a barrister, named

TOWNLY KNOWLES, had been a friend of Mr. SEGUR'S; and that he (the Defendant) and Witness had met in a house in Preston where neither of them should have been. JANE COATS is the other Stonyhurst Witness, and though she was very young when she knew ROGER, she describes his features in such a way as to show she has a fair recollection of him.

[The Court adjourned at four o'clock.]

ONE HUNDRED AND FIFTY-FOURTH DAY.—THURSDAY, JANUARY 8TH, 1874.

Mr. CHAPMAN BARBER said: May I take this opportunity of correcting an error in which I fell in giving an answer to a question put by your lordship with respect to Lady TICHBORNE'S jointure?

The LORD CHIEF JUSTICE: Certainly.

Mr. CHAPMAN BARBER: Your lordship asked its amount, and I said it was £1,200 a year, charged upon the Tichborne Estates under some instrument prior to 1844. I have since ascertained that the jointure was created by two instruments executed by Sir JAMES TICHBORNE after the death of Sir EDWARD DOUGHTY, and that it is charged not upon the Tichborne, but upon the Doughty, Estates.

The LORD CHIEF JUSTICE: That was my impression. What are the dates of the charges?

Mr. CHAPMAN BARBER: The one is dated 16th April, 1853; the other, 29th January, 1861.

The LORD CHIEF JUSTICE: Was it by settlement Sir JAMES was enabled to create the charges?

Mr. CHAPMAN BARBER: No, my lord; under the will of Miss DOUGHTY, which is dated in 1810.

The LORD CHIEF JUSTICE: What do the charges created in favour of Lady TICHBORNE amount to altogether? Was it not £1,200?

Mr. CHAPMAN BARBER: £2,000 a year, my lord.

The LORD CHIEF JUSTICE: It seemed strange that out of £1,200 a year she could allow the Defendant £1,000 a year; but now it is explained—it was out of £2,000.

Dr. KENEALY then resumed his address to the Jury. He said: May it please your lordship, Gentlemen of the Jury—I now direct your attention to the Witnesses who knew ROGER TICHBORNE at Tichborne before he left for South America,* and who are not Military Witnesses. The first is WILLIAM BAILEY, a tenant farmer, who knew ROGER when he was four years of age, and once took him in his arms and placed him on the horse, 'Cock Robin,' when he was a little boy. Mr. BAILEY swore positively that the Defendant was ROGER TICHBORNE. I shall pass over the

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evidence of these Witnesses rapidly, as late to-morrow, or at furthest on Monday, I shall have to recur to it on another part of the Case. He mentioned in the course of his evidence an incident which occurred in the hunting-field. ROGER, he said, came to the field with a pair of stirrups of brass into either of which he could have put both feet. On being remonstrated with he changed them. Imagine a man cutting such a figure in the public hunting-field! Probably such eccentricity so early dis-

* TICHBORNE seems to have had no notion of the ludicrous. In the 'South Pacific Times,' of August 29th, 1878, is a graphic account of one of ROGER TICHBORNE'S adventures when riding out with Mr. THOMAS C. HELSBY:—

"To return to the record of our excursion. On our way home, and when about a mile and a-half yet out of the city, while passing some ranchos on the right-hand side of the road (which you would no doubt recollect the situation of) coming in by way of the Tajamar, we saw a horse (dark brown or black) saddled and bridled in the style of the country, standing on the roadside, but without a rider, opposite and near one of the ranchos. An acequia (or drain) of running water ran along the roadside; between it and the ground occupied by the ranchos, and over it, to the best of my recollection, was a kind of wattle bridge, covered with earth, as a means of communication; the drain there being pretty wide and the water copious. Between the horse and the rancho stood, in straw hats, a countrywoman and a boy, who together with a young guanaco standing by, would appear to have completed, recently, the equipage of the horse in question. The woman referred to was talking with another, uncovered, who was likewise standing, and who appeared to be an occupant of one of the ranchos. Seeing the group, Mr. TICHBORNE reined up his horse, and we alighted for the purpose of treating for the purchase of the guanaco, for which he had, *impromptu*, taken a fancy. I, at his desire, treated with the countrywoman for it, speaking, of course, in Spanish, and telling him in English the price she asked for it, which was two dollars. This amount he then immediately handed to me, in the shape of *a two-dollar Chili gold piece*, which I gave the woman; and, while I was wondering how in the world he was going to get the animal

played will serve to guide you to a true understanding of his real character.

A JUROR: What age was he then?

Dr. KENEALY: It occurred in 1847.

The LORD CHIEF JUSTICE: He was then eighteen years of age.

Dr. KENEALY: This Witness is cross-examined, but his testimony remains unshaken, although he was, as usual, tackled as to dates, and warned to be careful, as what he had said before—that is, in the Court of Common Pleas—was in print. But the real point is not whether the Witness was correct to a month after all those years, but whether he was correct in his positive assertion that this gentleman is ROGER TICHBORNE, and you will remember that the Defendant recognized him the moment he saw him. Even if, as was insinuated, BAILEY had been pointed out to him, there is, and can be, no insinuation that BAILEY was party to a fraud. How he could have recognized the Defendant if he had not known him before, I for one cannot understand. The next Witness was HENRY WALSH, who from 1845 was occasionally employed on the Tichborne Estate, and frequently saw ROGER. He saw the Defendant at Alresford, and recognized him. He questioned him as to taking a hammer from him on a roof and using it, and the Defendant told him all about the incident. I do not profess to know or to be able to explain how it is that the Defendant remembers nonsense of that sort, and forgets many matters of moment, but so it is. I do not profess to solve the mysteries of the human mind. I accept the facts. On cross-examination the Witness said it was not the incident to which he had referred that made him recognize the Defendant, but his features. And so it may be said of all the Witnesses They are influenced in a minor degree by what the Defendant tells them of old times, but the main cause of their recognition of him is the similarity of his features to ROGER TICHBORNE and to the Family. His features, his walk, his figure, his manner, assured them that he was a TICHBORNE. This Witness was further cross-examined on the subject of an affidavit he had sworn; but the Prosecution did not establish anything calculated to shake your faith in his testmony. The next person in the group is THOMAS PARKER, a corn-dealer, and he gives a curious example as to a wrong date. He spoke here of a purchase of a horse in 1848, and he handed up a letter from Mr. GOSFORD to prove the accuracy of the date, while, as was pointed out on the last occasion, in the Court of Common Pleas, he said the horse was purchased in 1850. This shows how little reliance can be placed upon evidence as to dates after the lapse of so many years. He was right, you see, as to the fact, but wrong as to the date, although he had a letter in his possession, to which, if he had referred, on being examined at first, he would have seen that the year was 1848, not 1850. This Witness swore to the Defendant's resemblance to the TICHBORNE Family, particularly to Sir HENRY, and he is positive that he is ROGER TICHBORNE, and gave several reasons, independently of his resemblance to the TICHBORNES, for his conviction. He also is, of course, tackled on cross-examination on the subject of dates, and it was shown that he, too, was wrong as to a year or two; but I do not care for dates so long as the Witnesses are correct in their recognition of the Defendant. Mr. PARKER was convinced by appearance and voice, the moment he saw the Defendant; but subsequent conversation rivetted the conviction, and he particularly spoke of the upper part of the face—that part which is the nobler, and the least likely to be affected by the kind of life the Defendant had led. He also dwelt upon the twitch in the eyebrows, which he was positive ROGER had, "if anything particular took place." The twitch, he said, was in "the catch of the eyebrow," and no doubt he had a clear meaning in his own mind as to the catch of the eyebrow, although what it was it is not easy to say—but this, at all events, is clear, that ROGER TICHBORNE had the Family twitch. CHARLES GUY, a labourer on the Tichborne Estates, came next, and he identified this gentleman as ROGER CHARLES TICHBORNE. The moment the Defendant met the Witness, on taking a morning walk with Mr. HOPKINS—and the meeting was purely accidental—he said, "Good morning, GUY;" and the Witness said, "I touched my hat and said, Good morning, Sir." This took place shortly after the return of the Defendant, and his visit to Alresford. Of course it will be insinuated that the old Attorney, Mr. HOPKINS, told the Defendant who GUY was, and what was his name. Gentlemen, that would be an unwarranted insinuation in respect to a very respectable and honourable man.

The LORD CHIEF JUSTICE: Might it not happen very naturally?

Dr. KENEALY: No doubt it might, my lord.

The LORD CHIEF JUSTICE: Assuming that Mr. HOPKINS was convinced, as I have no doubt he was, that the Defendant was ROGER TICHBORNE, it would be quite natural that he should say, "Here is old GUY, you had better speak to him."

Dr. KENEALY: No doubt, my lord; but he may also naturally have thought it best to be silent, and so further test the recollection of the Defendant. But, Gentlemen, the Witness could not tell the date of this interview eight years ago, and I suppose you will therefore be asked not to believe him. I ask any one of you what you were doing or where you were any day this day five years? You could not tell; yet this poor Witness is expected to give the exact date! Well, CAROLINE SKATES is the next Witness examined, and she too knew ROGER well, and recognised the Defendant as the young master. Her opinion, too, was based on his resemblance to the Family; but she is immediately tackled as the others were on the subject of dates, to which I for one attach little importance.

The LORD CHIEF JUSTICE: They are important in this way, that if the Witnesses speak of an earlier or a later time their memory would be more or less vivid. They would recollect the man better than the boy.

Dr. KENEALY: That observation applies to some of the Witnesses, no doubt; but the great majority of them knew him up to the time he left England, and yet they are sought to be discredited because they don't recollect dates.

The LORD CHIEF JUSTICE: I quite agree with you that to say because a person does not recollect the exact time he saw ROGER therefore he never saw him would be a monstrous proposition; but there are some Witnesses as to whom it is of much importance that we should know the dates when they knew him as near as we can get them.

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into town, he was up on his horse, and having it put on over the pommel of his saddle before him; so preparing to bring it in himself. I then re-mounted too, and we proceeded on our return.

"The figure he cut of course was ludicrous. A gentleman on horseback with such an animal before him would appear so in any part of the world (here where the meanest dandy would be ashamed to be seen carrying a little parcel, not less so than elsewhere), and to-day, to the best of my recollection, he had light kerseymere pants, white waistcoat, and dark frock-coat on, or some such dress as when he changed to get a full-length portrait of himself taken standing, at my room. The consequence was that, after the first serious impression produced in me by seeing him do this was over, my risible faculties were excited, and I felt inclined to smile; an inclination I could not resist when I observed the grins on the countenances of the country people we met upon the way, and the sparkling of their bright dark eyes. As we got nearer the town, the dwellings being more contiguous and the number of those we thus passed increasing, with the prospect of what it would be when we should get within the precincts of the city, the pressure became gradually stronger until, feeling it was quite against nature to restrain myself from smiling, and fearing lest he should turn his head and see me do so—(for he was travelling along, evidently unconscious of all this, absorbed in his own contemplations)—since I was desirous to save his feelings being hurt in such a manner, I summoned courage enough to speak to him as if nothing extraordinary had happened, and excusing myself on the ground of its getting late for my business—for it was now about ten o'clock, and I had not yet breakfasted—I urged on my horse (which, with his, from the time the guanaco was purchased had been kept at a walking pace) and left him, coming into town alone. It is evident he walked his the whole way, for I had delivered my horse at the livery stables and arrived on foot at the hotel to breakfast—it being late to get it at my own home—when I found him standing with the guanaco beside him and a group of people round on the footwalk at the hotel door—the main entrance, or gateway of the house, rather, over which, on the second floor it was then situated, the entrance at that time being by a flight of stairs leading from a door in the front courtyard. I passed without speaking, or his apparently observing me, and do not recollect ever speaking to him afterwards; and certainly I never received another invitation to ride out with him. I have thought since that he probably felt slighted by my leaving him, but nothing could be further from my intention, or thoughts even at the time, as it was precisely to avoid giving him any ground of offence that I did so. I am sorry to think he may have made a mistake in this particular, for I have seldom met with a person whose gentleness and urbanity of manner commanded more of my respect, or the nature of whose antecedents in the matter complained of, and the sorrowful impression it had left on him, more of my sympathy. And looking at the whole question at this distance, and from this point of view, I entertain no doubt that the same qualities in the Claimant, together with the abundant and satisfactory evidence given during the great Trial as to his identity with Sir ROGER, aided by the vindictiveness of the Prosecution and the shortcoming of the Defence, account for much of the very extensive interest taken in his Case and the indelible impress it has left on the public mind. Indeed the extent to which his Cause has been espoused by *the people* of England, is one of the most remarkable and extraordinary features in the whole affair, since exercised in favour of a patrician by those for the most part having little interest in patrician claims; and is one of the best proofs that the national spirit is not dead, but, now as ever, before all, is a lover of justice and fair play. Whether Mr. TICHBORNE did or did not speak, or understand Spanish, I am unable to say. When he asked me to treat with the woman for the guanaco, or *ask her how much she would take for it*, I supposed that he did *not;* but, even if he did, I have repeatedly been requested, by persons much more familiar with the language than he could be presumed to be, to interview for them in a similar manner in questions involving matters of any consequence, as for instance anything of the nature of a bargain.

"When Mr. TICHBORNE left Santiago, he commissioned Mr. MOORE with the charge of the guanaco, which was kept consequently for some time on my premises and was sent afterwards to my brother WILLIAM'S in Valparaiso, where it died."

Dr. KENEALY: If the Jury bear those observations of your lordship in mind, they will tend very much to the elucidation of the truth in this Case. Gentlemen, you remember the Witness stated that the Defendant resembled his uncle Sir HENRY in his features very much, and there has been no contradiction given to that fact by any member of the Family. Such contradiction, if it could be given, would be important, because I lay stress on the fact that the Defendant resembles Lady TICHBORNE, Sir JAMES, Sir HENRY, Lady RADCLIFFE, and, in some respects, Sir EDWARD DOUGHTY also. The Witness also recognised the Defendant by his voice. It will doubtless be pressed upon you by-and-bye by Mr. HAWKINS that you having heard the Defendant several times address the Court in the course of this Case would detect no foreign accent. But, Gentlemen, you will not lose sight of the fact that you did not hear ROGER TICHBORNE speak twenty years ago; and that these Witnesses, who did, are in a far better position to judge of his voice and accent than you can possibly be. The next Witness is ANNE WALSH, wife of HENRY WALSH, formerly house carpenter at Tichborne. She often, she says, went to Tichborne House, and ROGER—in his restlessness of disposition—often came to her place for brass-headed nails and screws. She describes his hands and feet as being small, and spoke of the twitch in his eyebrow, and she was positive the Defendant is ROGER TICHBORNE. She, too, was asked as to dates, and some cruel questions were put to her as to the dismissal of her husband from Tichborne. The only reason there could be for putting those questions was to annoy and insult my Witnesses, as LILLYWHITE and BAIGENT were insulted by being called one-eyed men. The next Witness in the group is CHARLOTTE HOLDER. She was charwoman at Sir EDWARD DOUGHTY'S for seven years, and often saw ROGER TICHBORNE. Looking at the Defendant, she said "He is ROGER TICHBORNE whom I used to see coming backward and forward to Tichborne House many times," and she added, "I recognise him by seeing him"—not, you see, by anything she had heard—and she went on to say, "I knew him to be a TICHBORNE by his walk." You cannot doubt that this gentleman does bear a remarkable resemblance to members of the TICHBORNE Family. I am sorry to say that this very respectable woman was treated very contemptuously, as many other Witnesses were, by the Defendant on his first seeing her. She was in a room with him and others for twenty minutes, and he merely spoke a single sentence to her. Is that the way an impostor would have acted? Would not an impostor have tried to conciliate her? But the Defendant did not even offer her a drink, and scarcely spoke to her. Of course, on cross-examination she is found to be defective as to dates. If she had been perfectly correct, I should doubt her evidence; but you will be asked to disbelieve her because she has not dates for everything at her fingers' ends. She had doubts, she said, as to the identity of the Defendant at first, but the moment he spoke her doubts were removed. "The reason I did not recognise him at once was that I wanted to hear his voice." No evidence could be more natural or more evidently truthful. My Witnesses, Gentlemen, do not come to swear a thing because they have said so-and-so, but because they believe what they say. When they see the Defendant they are convinced that they are in the presence of ROGER TICHBORNE, and they say so. This Witness made a mistake as to the last time she saw ROGER before he left, and I allude to it because it will doubtless be dragged out of its grave by Mr. HAWKINS. She said she last saw him the year Sir EDWARD DOUGHTY died—namely, in 1853; but the Lord Chief Justice said the mistake she made was obvious to his mind. ANNE NOBLE is the next Witness, and she remembers TICHBORNE since 1847. She recognised the Defendant, she said, by his features and general appearance; also by his walk and his voice. He had, she says, the TICHBORNE walk—particularly like that of Sir JAMES—who was a little weak in one knee, and seemed to turn it in. The Witness, too, on cross-examination was wrong in her dates, saying that she last saw ROGER a few weeks before Sir EDWARD died; but it is plain she was mistaken, as she saw him last in 1852, not in 1853. You will say whether she is not to be believed because she fell into such a trifling error after over twenty years. In describing the Defendant, she particularly mentioned the upper part of his face and his eye, as so many other Witnesses have done, as resembling the TICHBORNE Family. He went to Mrs. NOBLE'S house disguised for some reason which I cannot explain, and as a Mr. TAYLOR, but still she knew he was a TICHBORNE.

A JUROR: Did she not say he had light hair?

Dr. KENEALY: Light brown hair, and she added, his hair is darker now than it was. She evidently used the word "light" needlessly, as afterwards, in reply to the Lord Chief Justice, she withdrew that word, and said his hair was brown. Then that which was so frequently used in the Common Pleas was resorted to, and a *suggestio falsi* was put to her. "Did ROGER wear whiskers?" I say that it is eminently unfair to suggest to a Witness a thing that never did exist. But it was elicited that BOGLE had seen her. This she at once admitted, and said they had a little conversation together, the particulars of which she did not remember. This she was sure of, that they did not talk of past times. It was a passing, accidental, and trifling conversation. Gentlemen, all these people, so strong in their faith, seem to believe that it is only necessary to see the Defendant to recognize that he is Sir ROGER TICHBORNE. You will observe, too, that they all spoke of him as Sir ROGER, not as the Defendant, or the Claimant, or the Prisoner. All this I submit is a strong indication of truth. I ask you to look upon it as evidence of veracity, and as negativing the idea that so great a number of persons in the full possession of their faculties could be deceived or deluded on the subject. HENRY NOBLE, the husband of the last Witness, follows her in order. He was the Tichborne farm bailiff, and has a distinct recollection of ROGER, of his dark brown hair and twitch—which he called a "pinker" in the eyebrow, whatever that may be. He walked, he said, like Sir JAMES, his father, who dropped one knee. The Witness swears he distinctly recollects the voice and features of ROGER TICHBORNE, and recognized the Defendant as the young master. The first time he saw him after his return was at Christmas, 1866. He had had no communication with him, but as he saw the Defendant walk across a field he recognized Sir JAMES'S peculiar walk. The gentleman, he says, came up to him, and he knew Sir ROGER CHARLES TICHBORNE, and the Defendant knew him and called him by his name. The Defendant, he added, asked him did he remember him grubbing up the old oak "moor," and he said he did. "But I never finished it," said the Defendant; "So-and-So did"—mentioning the name—and that was true. Surely a paltry matter of that kind as to who continued the work of grubbing up roots, could not have been spoken of by the various BAIGENTS who "coached" the Defendant! It is not a thing the Defendant would be likely to be coached upon, yet he not only told the Witness—the farm bailiff—that he (the Defendant) commenced grubbing up the stump of the oak, but told him the name of the labourer who continued the work. But it was upon personal resemblance that he principally went, and I lay the greatest stress on the almost unanimous testimony of my Witnesses as to the personal resemblance, peculiarities, and characteristics of ROGER TICHBORNE and his likeness to the Family—to the fact, in short, that he is a TICHBORNE.

A JUROR: Did not the Witness give evidence in reference to the tattoo marks?

Dr. KENEALY: He did, sir. He saw ROGER frequently working at the stump of the oak, with his arms bare, and he distinctly negatived the assertion that ROGER was tattooed in any way. I feel indebted to you for drawing my attention to the fact. I see that you have taken a most careful note, and have a distinct recollection of the evidence. One other thing of much importance on the subject of identity the Witness mentioned—namely, that when he heard the Defendant speak he recognised the voice of ROGER TICHBORNE. It is said that the Defendant endeavoured to deceive the Witnesses by putting on a false French accent, and you remember the graphic description we had on that matter from the inimitable Miss NANGLE. But, Gentlemen, if he attempted to deceive anyone, it would not be an educated person like Miss NANGLE, but Witnesses in this class of life; and the evidence negatives the making any such attempt. The Witness was asked at the last Trial whether he had seen any tattoo marks, and he said he had not, and that there were none in 1849. Well, Gentlemen, as you know, no one thought anything about them until the Attorney-General's statement with reference to Lord BELLEW. In the present Trial the Witness in cross-examination said he thought he had heard in the 'Swan' public-house that ROGER TICHBORNE was tattooed. This evidence was merely hearsay, and a long discussion took place with reference to it between myself and the Counsel for the Prosecution, after which we came to what I may call the point; for the Witness said he had never said that ROGER had the letters "R.C.T." tattooed on his arm, and that he had heard no one say that he was tattooed before the Defendant came to England in 1866. It was suggested that a conversation took place on the subject of the tattoo in the presence of Mr. ROUSE at the 'Swan' at Alresford, and that worthy gentleman, no doubt, would have been able to throw some light on the matter, but they did not call that false friend of the Defendant's—if ever he was a friend at all, and not a plant put upon him from the beginning, as I strongly suspect he was. The Witness is pressed as to the date of this conversation at the 'Swan,' and he said, "I do not know when it was I said he was not tattooed." It is put before you on behalf of the Family that they agreed to keep the matter of the tattoo a dead secret; and the suggestion is that if this had not been done, and the Defendant had heard what marks there were on ROGER TICHBORNE—he who had cut and scarified himself, putting an issue here and a seton there—he would have gone to some sailor and got himself tattooed. They agreed, therefore, that it should be kept a secret. But how could it be so if it were the topic of common conversation at the 'Swan' at Alresford in 1866? ROUSE at that time was playing the part of the "dearest friend," and could tell the Defendant what was the subject of conversation in his smoking-room. What, then, becomes of the dead secret? But if in this ale-house gossip these village clowns did talk about tattoo marks being supposed to exist on some members of the Family, what does it prove? Just nothing. The great point is, when did it take place? If Mr. NOBLE made a mistake in the date, and it really took place after Lord BELLEW had given his evidence, that would easily account for the conversation at the 'Swan.' If, on the other hand, it did take place in 1866, ROUSE would tell him; and then if he were an impostor he would have ascertained what the supposed symbols were, and have had them put on his arm.

The LORD CHIEF JUSTCE: *The tattoo might have been talked about at the 'Swan' without going into particulars as to the nature of the marks.*

Dr. KENEALY: If this was talked of in 1867 when ROUSE was in constant communication with the Defendant, he would have communicated the fact to him, and he could easily have ascertained from his Mother or from BOGLE what the marks were, and could have got himself tattooed according to their report. That is the whole of the evidence of HENRY NOBLE to which I shall refer at present, though there is other matter in his evidence to which I shall recur hereafter. JAMES MORLEY comes next. He is a farmer and maltster at Alresford, and he corroborates the evidence given by BOGLE with regard to ROGER wearing a blue and white dress, like that of a girl, when he first came to Alresford. This is a Witness upon whose evidence I rely materially, for his first impression was that the Defendant was not like ROGER, although, after he had spent some time with him, his face grew upon him as it did on Miss BRAINE; and he recognised a strong likeness in him to Sir HENRY TICHBORNE, and ultimately identified him as ROGER. With regard to the first conversation he had with the Defendant, Witness said he (the Defendant) asked him whether he remembered when the 'New Inn,' to which there was no right of way, was built by STEPHENS. Witness answered in the affirmative. This is a thing, I submit to you, which is of much importance, because the fact spoken to took place a very long time ago. The Witness subsequently stated that he asked a wrong question of the Defendant in order to try him. He said, "What a pity it was the Family destroyed old Alesford pond." The Defendant, after some consideration, said, "The Family used to have a fishing right in the pond, but it had been sold 200 years ago." Only fancy ARTHUR ORTON knowing that, Gentlemen!

The LORD CHIEF JUSTICE: *How would the Defendant know it?*

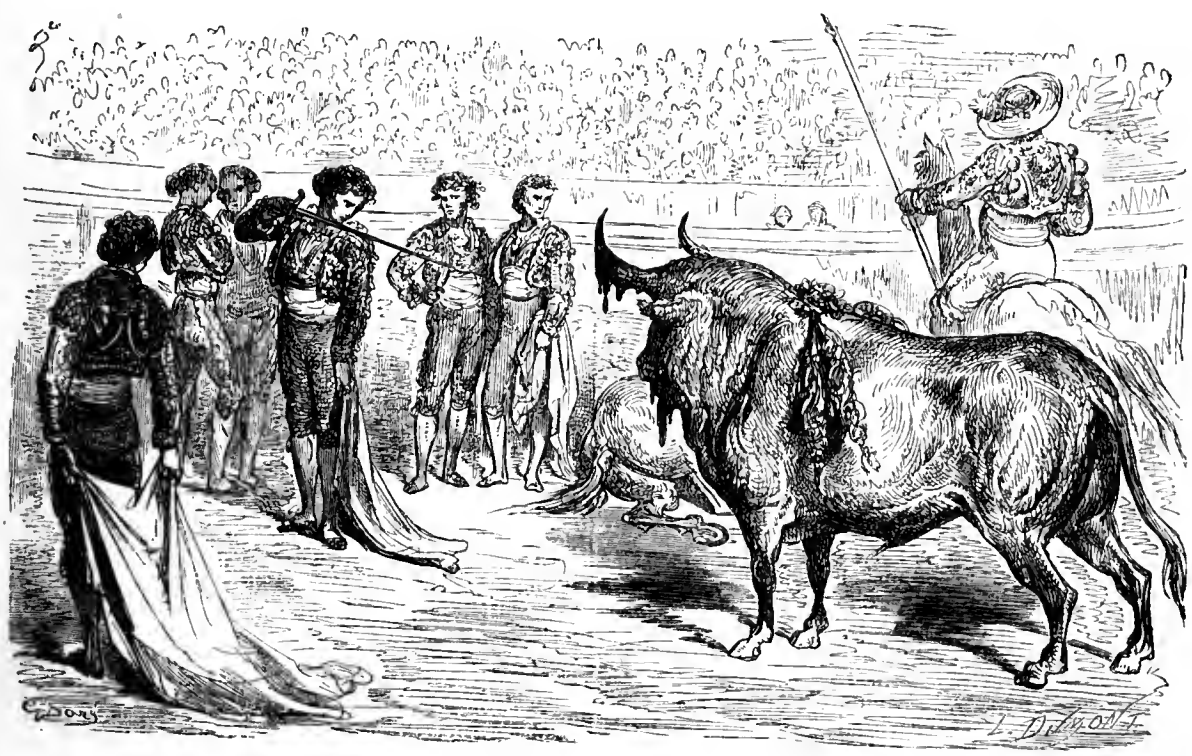
Dr. KENEALY: It would be a family tradition, no doubt, my lord. With regard to the personal appearance, Witness said he had a full look at the Defendant, who turned his face about so that he might examine him, and the result was that he recognized him, and could speak to his identity without a doubt. He says he remarked to the Defendant whilst he was examining his features, "Perhaps I am scrutinising you too closely?" to which he received the reply, "No; I have plenty of that;" God help him, and he *has* had plenty of that. In cross-examination Witness said ROGER TICHBORNE had eyebrows of a rather dark colour. Then the untrue suggestion was put to him, "A good red face, was it?"—the whole of the evidence, you will remember, being to the effect that ROGER TICHBORNE had a sallow face; but the Witness answers, "No, he did not look very healthy." I don't know whether these questions were suggested by ROUSE, who was in Court sitting behind Mr. HAWKINS at the time, but it is strangely suspicious. He is asked, "Did ROUSE know you had been five or six times asking after ROGER TICHBORNE?" and he answers, "I do not know what I did, for I did not use to go to ROUSE'S much." Then the cross-examination goes on: "You used to go to the 'Swan?'—No. Where did you go?—I used to go wherever the Defendant was. I used to put my horse up at the 'Running Horses.' I inquired for him there, but found he was gone." Further on he says, "I don't want to know anything about ROUSE. I don't like him." If it be meant to suggest that ROUSE coached up the Witness MORLEY, ROUSE should have been called, as he would have been able to give evidence on the matter; but he was not put in the box, therefore I submit the suggestion is not worthy of serious thought, and should be dismissed without hesitation. ELIZABETH STUBBS is the next Witness, and she said she remembered ROGER going to her husband's farm for the purpose of shooting. She remembered him very well, and when asked whether she could see him in Court, she said, "Oh yes; I can see him," and no doubt you will remember the pleasing smile of recognition which lit up the face of this lady as she said that; and I would point this out to you as a strong evidence of the *bona fides* of my Case. She says Mr. ONSLOW was not in the habit of visiting at their house, and would not know anything about the picture. It is too bad to be constantly levelling insinuations of that kind against Mr. ONSLOW. I have already complained of it, and shall not weaken my complaint by dwelling on it any longer. WILLIAM HALL follows ELIZABETH STUBBS in this TICHBORNE group of Witnesses. He is a blacksmith, living at Alresford, and he knew young ROGER CHARLES TICHBORNE. He said he recognized ROGER in the Defendant as much by his voice as anything else. The cross-examination was principally with reference to Mr. ONSLOW, who certainly must have quaked in his bed every morning when his newspaper was taken to him, to know what new suggestions had been made about his rascality! HENRY MILLS POWELL, a musicseller at Alresford, was the next Witness. He said he used to give ROGER lessons in music, and he remembered that the youth was in-kneed. He could not mistake him, he said, as he had plenty of opportunities of seeing his face, from the nature of the lessons he was giving him. He met the Defendant by accident at the 'Swan' at Alresford, and you will see, Gentlemen, there can have been no Mr. ONSLOW or anyone else at work here. The Witness says he went into the Swan-yard, and the Defendant came up to him and said, "Hallo! This is POWELL, isn't it?" To which Witness replied, "Yes." And in course of a conversation which they had the Defendant said he (POWELL) had cultivated a moustache since he saw him last, which was a fact. The Defendant then left by train, and there again you see there was no art, or flattery, or cajolery practised by the Defendant to win over the Witness to his cause. He does not even say, "All my relations are opposing me, and you will be a very valuable Witness in my favour," but he merely recognises the man, and leaves at once by train. In cross-examination Witness said he did not suppose any one knew he was teaching ROGER the French horn, and on being asked about ROUSE, he denied having seen him with reference to the Defendant and his claim to the estates. There was a very important question asked about ROGER reading music very well for an amateur, and Witness was questioned in the Common Pleas on the point, but I must ask you to believe that ROGER TICHBORNE had no knowledge of such intricate matters as the difference of key between the French horn and the violin, and therefore the Defendant's ignorance on the matter cannot be wondered at.

The LORD CHIEF JUSTICE: What I wanted to know was, whether a knowledge of keys is not elementary in music?

Dr. KENEALY: Perhaps it is, but I doubt if ROGER ever learned it. WM. MANSBRIDGE was the next Witness. He said he knew ROGER had been sent shooting with him, and had been up in his room helping him to make bullets. This Witness speaks to the absence of tattoo marks on ROGER'S arm, and he says that the Defendant whom he sees in Court is the ROGER TICHBORNE he knew. He further states that he saw the Defendant at Alresford, and was asked by him if he could recollect what they had done together—whether he could remember his (ROGER'S) shooting from his shoulder, and whether he could remember holding up the music whilst he (ROGER) played on the French horn? These questions he answered in the affirmative. A great point has been made because of a mistake in an affidavit of this Witness, with regard to his age. It was put at 24, when it ought to have been 30, but the error was probably due to some scribbling clerk, and when discovered it was set right. Was it of any real consequence? Or could it have been made through any evil design? THOS. LILLYWHITE, a labourer at Farnham, is the next. He knew ROGER, and saw him grubbing a "moor." When asked, "How do you know the Defendant is ROGER?" he says, "I am sure he is. He is the gentleman who was grubbing a 'moor.'" He remembers ROGER'S voice and his being in-kneed. LUCY MILLER comes next, but she does not indentify the Defendant as being ROGER, therefore I will not trouble you with her evidence. JOHN FISHER is the next. He has lived at Tichborne all his life, and knew ROGER very well. He said, "the Defendant is the very man I knew as ROGER." He recognized him by his eyes, nose, and walk, which, he said, was more like Sir HENRY'S than anyone else's. Although this Witness spoke to seeing KATE DOUGHTY with ROGER, Serjeant PARRY does not put any question to him. DAVID PINK is the next, and he is a man who has been employed on the Tichborne Estate for a great number of years. He identified the Defendant as ROGER, whom they used to know very well. In cross-examination he remembered receiving a pipe of tobacco from ROGER when he was planting some trees. It seems a trivial circumstance to remember, but some persons' memories do store up such nonsense. MARY ANN BYLES, who came next, lived at Cheriton for twenty-eight years, and often knew of ROGER paying visits to Cheriton House. She identified the Defendant as ROGER, whom she said she had seen with Miss DOUGHTY alone; but that is a matter I shall come to later on. She said she met the Defendant at a railway station at Southampton, and recognized him at once. He was very much like Sir HENRY JOSEPH TICHBORNE—all but his hair and eyes. He was like him in general appearance, and especially in his manner and walk. In cross-examination, she said he was exactly like he was when he was twenty-one, except that he had become a little stouter. Then came on the inevitable question, Do you know Mr. GUILDFORD ONSLOW?" and she replied, "No; I know all the family with the exception of him." We then have JOHN GILES, who said he knew young Sir ROGER, whom he used to see very often at Tichborne walking and riding. When asked whether he saw him in Court, he said (pointing to Defendant), "That would be him, I should say." The Witness remembered having received a half-crown from ROGER on several occasions; and when that occurred it would be such a pleasant circumstance to him, I should think, that he would not be likely to forget the donation or the donor. Mrs. EMILY BURT—or, as she was scornfully and insolently called, "That woman BURT" is the next Witness. She used to be at the mill at Cheriton, which was kept by her father. ROGER used to be fond of going to see her father and brother, for with the latter he was very familiar. She remembered his partiality for smoking and the ball given at Tichborne on his coming of age. This Witness identifies the Defendant as being ROGER, and I submit she is not a person who would be likely to be mistaken or under any delusion, or to give false testimony for a man like this. She says when she first saw the Defendant he asked her whether she remembered his shooting her father's dog in mistake for a hare, and she recollecting the incident, said she did. The suggestion of the Prosecution on this matter, Gentlemen, is that the butler had coached the Defendant on this point, and the Defendant immediately went to the sister and displayed his ill-gotten knowledge, but all that, I submit to you, is quite unworthy of your belief. ELIZA ROPER, who was at one time second laundrymaid at Tichborne House, remembers the ball, and also Miss DOUGHTY being present on that

occasion. She also remembers the Defendant, whom she identified in Court as ROGER TICHBORNE. Serjeant PARRY, convinced, I suppose, by this Witness, did not ask her a question. CHARLOTTE GRANT comes next. She knew ROGER TICHBORNE at Tichborne, and she says she remembers waiting there upon Miss DOUGHTY. She had seen ROGER frequently at Tichborne and at Poole, and the says the Defendant is he. Miss BRAINE, she said, used to correct his letters. That is a mistake, and I have no hesitation in pointing it out to you. She was six years connected with the Family, and had therefore many opportunities of seeing ROGER; and, as you will remember, she spoke to there being no tattoo marks on ROGER'S arms. She was cross-examined with regard to Miss BRAINE'S correcting the letters, and also with reference to the tattoo, but to no very material purpose. By the way, it has been suggested that many of our Witnesses were kept away from the Court when they were not wanted to give evidence, so that they might not see too much of the Defendant, or enough to persuade them that he is not ROGER TICHBORNE. Well, we had 200 Witnesses from the country, and if these had been kept in London for days and days funds would have failed, and we would not have been able to conduct his Defence at all. He did the best thing he could; and I hope you will make allowance for him under these miserable circumstances. If, however, we had had funds enough to keep our Witnesses here, the Prosecution would have used the argument, "The Witnesses did not recognise him at first, and they were kept and feasted and courted until they did." Therefore you see we could not please them whatever we had done. They are like the sailor who did not care about being flogged high or flogged low—however they do it he does not like it. (Laughter.) The Witness is unable to give dates, but she says she knows she is not mistaken about the Defendant's identity. She saw him at the sale-rooms at Southampton, having gone there to see an impostor. There is hardly a corner in England, you see, Gentlemen, in which he had not been denounced as an impostor. Miss BRAINE, who has been shamefully vilified, but whom I believe to be as honourable and truthful a lady as there is in broad England, is the next Witness. She first became acquainted with ROGER, she says, in 1849. She is a convert, and was at Tichborne a year, and during the whole of the time was on the best possible relations with the Family. From her being a convert from the errors of Protestantism, and on a friendly footing with the Family, if she had any religious predilections one would suppose that she would have been induced to be on the side of what one of the Witnesses called "Mr. HAWKINS'S

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 54.—MATADOR KILLING A BULL AT SANTIAGO.

party," rather than on the Defendant's. But, like a great many other Witnesses in this Case, she is willing to sacrifice what might be said to be her interests—at all events, in this life—to truth and justice; and therefore she comes forward with every conceivable obstacle against her to speak in favour of this Defendant. If this could be suggested that she was acting under the influence of passion or disappointment I don't dispute that it would weaken the strength of her testimony; but not one single thing has been alleged against her that would justify you or any body of men in the world in refraining from reposing the most implicit faith in all she has said. No doubt she did not have the same opportunities of seeing ROGER TICHBORNE as many Witnesses had; but she is a person of high education and of grave and deliberate temper, and she gave her evidence with a seriousness and gravity that cannot fail to recommend itself to everybody who heard or who has read it, and I believe there is hardly a gentleman among you who would be led to believe that she was a person likely to come to a wrong conclusion. She says that, having resided in the Defendant's family nine months, she had opportunities during that time of testing in every way whether he was ROGER TICHBORNE or not, and you may be sure she would have considered the matter very seriously before she would imperil her welfare in the world by turning all people who were in a position to advance her interests against her. She could speak positively to the fact that he was the man he claimed to be. She no doubt fully considered the matter, but no fear of consequences prevented her from speaking the truth. She put her trust in God, who I believe never deserts those who do right. If the Defendant's claim rested upon anything like falsehood, and if any one living could have been able to test that, it was Miss BRAINE, because, whatever face or mask a man may wear before the world, he can wear none in his own home; it would be such an intolerable tyranny that no one could endure it. So that, living there in his own home, she must have known him in his true colours. Their early acquaintanceship would be a matter that would be almost always talked of, and if he was an impostor, as he is described to be, it would have been impossible for him to avoid being discovered by this lady—a lady of great intelligence and keen discrimination. He would have been almost instantly discovered, and I do not hesitate to ask whether, if he had been an impostor, he would not only have been discovered but denounced by Miss BRAINE? If she had been able to denounce him, would she not have been welcomed with open arms by every member of this Family, as powerful—politically and polemically—as there is in England, as coming forward in the interests of truth and justice against an impostor; and would it not—to use a homely phrase—have been the making of her

fortune? She does not do so, however, and we see her here giving evidence fearlessly, perfectly unshaken, and in a manner that showed she was a true and sincere believer in the Defendant's being ROGER TICHBORNE. Evidence of this kind, I must submit to you, is of the most weighty nature; and though you will be told that Miss BRAINE only saw ROGER for a few days, I contend that a few days with a person like this are equal to years with other people. His characteristics would be firmly impressed on her memory. She says, "I remember ROGER TICHBORNE very well. I see him in Court now—the Defendant is he. He was slightly built, of the middle height, had thick eyebrows, a sallow complexion, peculiar eyes, and brown hair." Further on she said she remembered the lifting of the eyebrow. In answer to the Lord Chief Justice, she said she did not know ROGER for more than nine days. She says: "I remember his articulation—a sort of idle way; as if you dropped the words out of the mouth instead of uttering them. That struck me very much." There is the careless, idle man, which we know the Defendant to be, in the description.

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY continued: I was calling your attention to that remarkable expression of Miss BRAINE'S about his dropping his words out of his mouth in a lazy sort of way—another peculiarity, I say, that is to be found in the Defendant. She went to see him somewhere about January, 1868, when he was staying at Croydon; and I aver that he would not have dared to invite her to come to see him if he had been an impostor. Probably it would have been more chivalric if he had gone to see the lady; but this man thinks himself a kind of prince.

The LORD CHIEF JUSTICE: He did propose to go down to Devon to see her, but she said she was coming up to London, and would call on him.

Dr. KENEALY: I am obliged to your lordship.

The DEFENDANT: You see I am not quite so black as you paint me.

Dr. KENEALY: Well, Miss BRAINE speaks to various portions of his features, and shows her recollection to have been very accurate by noticing that his nose was different—the difference, as you remember, being caused by the accident that occurred to him in Australia. Then Miss BRAINE puts a test question to him about the night of the ball, when he took rather too much drink and was locked into his room by her. That question he answered satisfactorily; and it is almost unnecessary for me to point out that no impostor could have done so. A great deal has been said about Miss BRAINE taking charge of his household when the Defendant started on that mad Chilian expedition; but I think if Mrs. LUSHINGTON saw no impropriety, no person else should censure her for that. For my part, I honour Miss BRAINE very much for not having deserted this man in his misfortune. It is one of the great comforts and glories of life that women do remain devotedly attached to men in the hours of their affliction. It is to that SCOTT refers when he says:

> "Oh! woman, in our hours of ease
> "Uncertain, coy, and hard to please;
> "When pain and anguish wring the brow,
> "A ministering angel thou!"

A great deal of abuse has been heaped upon Miss BRAINE for having continued on friendly terms after she knew what he had said in reference to her old pupil; but I must ask you to exercise your own judgment on that, and not to be led by the falsehoods, the jests, or the sophisms of the shallow. I would only remark that, if ladies are to associate with none but pure and immaculate men, I am afraid the ladies will not have many acquaintances. (Laughter.) Besides, Miss BRAINE tells us that she had heard nothing tangible, and although she was much pained by it, hoped it might turn out to be a mere rumour, and therefore thought her best plan would be to go on as before, and ignore it. For my part, I think her wisdom in coming to that conclusion is much to be commended. Speaking of the peculiarities by which she knew him, she mentions that change of expression, from melancholy to surprise, which I ask you to say the Defendant has exhibited at least a hundred times since he sat here. At first, when she entered the room, she did not think he was ROGER TICHBORNE; but the resemblance he bore to him gradually stole upon her, and she was convinced when she heard his voice. Some questions were put to her about the Defendant's wife which had no bearing on this, and which could only have been put for the purpose of wounding this lady herself, and this helpless man's feelings. I think I have a right to complain of this, for it is bad enough for a man's own Counsel to say what he thinks necessary in regard to him; but it is rather too much that the Counsel for the Prosecution should go out of his way to inflict needless pain. I come next to a reference to the Chilian lock of hair, about which the Defendant wrote these absurd letters expressive of his pleasure at getting it, and I find that Miss BRAINE says that when she asked him if he remembered the lock of hair being cut off he replied "Not a bit," showing that he really cared very little about it. Then we find questions put to her as to whether she had not asked Mr. HOLMES to be allowed to see ARTHUR ORTON'S letters, and whether Mr. HOLMES had not told her about its having been found that ORTON had been in Chili, and so on—questions that could only have been put on information furnished by HOLMES; and yet that is the gentleman they taunt me with not having called. There are also questions about a matter for which no Counsel who respected himself could defend his Client; I refer to his conduct in connection with these letters that were shown to Mr. SCOTT, at Alresford. No one who reads the evidence can help admiring the wisdom of Miss BRAINE'S advice; for although she only knew that there was some unpleasantness about the letters, she urged him to tell the truth whatever it was. It would have been well for him if he had done so, but unfortunately he had not strength of mind enough, just as he had not strength of mind enough to keep the promise he gave to his aunt to give up heavy drinking.

The LORD CHIEF JUSTICE: Is there any proof of his taking to drink after that?

Dr. KENEALY: Oh yes, my lord.

The LORD CHIEF JUSTICE: Where?

Dr. KENEALY: Everywhere.

The LORD CHIEF JUSTICE: Everywhere is nowhere.

Dr. KENEALY: I pointed out all these things in my first address to the Jury, and I gave chapter and verse.

The LORD CHIEF JUSTICE: *You spoke of Ireland!!!*

Dr. KENEALY: Your lordship surely has not forgotten the letters that he wrote about passing jolly nights with GOSFORD before he left England?

The LORD CHIEF JUSTICE: *There may have been expressions of the sort in one or two letters to* GOSFORD, *but I do not remember any evidence of his having been drunk at Canterbury!!!*

Dr. KENEALY: Lady DOUGHTY complained that he had fallen back into his old courses.

The LORD CHIEF JUSTICE: And he complained of her saying that.

Dr. KENEALY: Well, Gentlemen, if I bear it in mind, I will give you the references again, although I own I am surprised that my Lord Chief Justice has so wholly forgotten them.* Miss BRAINE, Gentlemen, as I formerly remarked, could have coached up the Defendant if he had condescended to ask her, and she might have done so quite innocently; but there is no proof of her ever being asked to give him any information. Then there come some more insulting questions about her keeping up her acquaintance with the Defendant after hearing what he said about Miss DOUGHTY, and she gave that answer which I used a short time ago about having very few friends if we cut all those about whom we heard rumours. I am thankful it will never be a reproach to my conscience that I treated any of the female Witnesses in that way. I wonder, however, how many pure and immaculate people were present in Westminster Hall when this lady was censured for associating with the Defendant? The next Witness in the group is THOMAS MUSTON, the groom and valet. He was transferred to the service of ROGER in 1849, soon after he came back from Stonyhurst, and went with him to Dublin and Cahir. He also went with him to Upton, and continued in his service till the early part of 1851; therefore nobody would be more likely to have a good recollection of him than this man. He speaks amongst other things to the shirts ROGER used to wear, and mentions some that had monkeys' heads on them. I have wondered at times what sort of people they were who wore shirts with monkeys' heads, and always thought there must be something wrong with them. (Laughter.) A man with monkey-headed shirts is just the sort of person that my Client has proved himself to be. I suppose these shirts are worn by students deep in divinity; meditating much on theological law! This Witness speaks to his remembering incidents about his horses and dogs, which neither CARTER nor MCCANN knew anything about, and which therefore they could not have told him anything about, even if they had wished. He remembers the features of his master, describes them to us, and says this man is he. The Witness is cross-examined at great length, and in the course of it one of the usual kind of unfair insinuations is made against the Rev. Mr. GUY, of Liverpool. Then we come to PHILIP BAKER. He was, when sixteen, groom to Mr. SEYMOUR of Knowle; and, on the death of the old gentleman, he went into the service of Mr. HENRY DANBY SEYMOUR. This Witness had seen ROGER out shooting, and says he was a pretty good shot. He describes his features, and says this is he. He sees in him a resemblance to Sir JAMES. He saw the Defendant first at the beginning of this year, who sent up word that one of his grandfather's old servants wanted to see him. He remained with him two hours, and he says the Defendant asked him a number of questions as to what had been done with horses and other things. The Witness was in the room for ten minutes before he recognised him, but in the end had no doubt about him. BENJAMIN DAWSON is the next of these Witnesses. He was forty-three years a head-gardener at Tichborne, and knew young Mr. TICHBORNE very well. He describes him to us; and men-

* The reader is referred to *Trial*, Vol. III., pp. 347, 348, 349, 350, 351, 352, 354, 355, *cum multis aliis*. It was a common practice of the Chief Justice to affect ignorance of facts that had been abundantly proved. As his powers of memory were great, no one can ascribe this to any failure of recollection. Indeed—when he pleased, or when it suited what may be called *his* view of the Case—the knowledge which he evinced, even of the most trifling details, was something marvellous.

tions, amongst other things, that he was a very good shot, and used to shoot at anything he saw. He recognised the Defendant by his face, his hair, and his knees. HANNAH DAWSON, the wife of the last Witness, also says this is ROGER TICHBORNE. She recognised him by his face and the shape of his head, and says his walk is the same. ANN MINES remembers seeing ROGER at the fair at Tichborne in 1848, and describes the incident of his whip coming across her face, and telling a young man who wanted to punish him, "Never mind; it is the young Frenchman; he does not know what he is doing; he is half silly the half of his time." I think he is wholly silly the whole of his time. PETER CHICK is the next of these Witnesses. He has been a watchmaker at Bognor, and a travelling hawker for many years, and showed much of the intelligence belonging to that class. He speaks of seeing ROGER on different visits he made to Tichborne, and also to seeing him at Cheriton with Mr. GOSFORD, and out shooting with BRAND. He remembers ROGER, and tells us that is he. He recognised him when he saw him at Southsea, and in the course of conversation the Defendant showed a knowledge of certain things which only the real man could know. CHARLES LEWIS is the next Witness, but as he will take some time, I will leave him till to-morrow.

[The Court adjourned at four o'clock.]

ONE HUNDRED AND FIFTY-FIFTH DAY.—FRIDAY, JANUARY 9TH, 1874.

Dr. KENEALY continued his address to the Jury:

Gentlemen, the next person in the group of TICHBORNE Witnesses is one to whom I alluded yesterday—a man named LEWIS, who keeps the Alexandra Hotel at Brentwood. He was apprenticed to a draper at Alresford, and was the frequent companion of ROGER TICHBORNE from 1846 to 1849, being in the habit of walking about with him in the evening. He mentioned that on one occasion he ran ROGER through the arm with a small sword-stick and he remembers him perfectly well. When he saw the Defendant after his return, the twitching of his eyes brought back to him, he says, the old ROGER TICHBORNE. He asked the Defendant if he remembered the last time he spoke to him, and the reply was, "I was riding with my cousin KATE, and I struck you with the whip, and wished you good-bye." They once went together, the Witness said, to the Tichborne Downs Inn, and the Defendant told him what they had and how much it cost. He also remembered their meeting on one occasion some girls, and going with them to Tichborne Downs. It is difficult to believe what has been suggested on the other side—that all this was pure lying from beginning to end; but I must leave you to judge. In cross-examination, the Witness was asked if he were dismissed; but, though he admitted that he lived a rather free sort of life, he denied that there was any dismissal. One can easily understand ROGER'S making him a companion. As long as he was at the Irish barracks he had plenty of amusement; but his life at Tichborne must have been as dull as ditch-water. Sir EDWARD DOUGHTY scarcely ever stirred out, and the only society he had was that of Lady DOUGHTY and his Cousin, Miss DOUGHTY. He was evidently not a man of very refined ideas, and probably he was most at home in the company of a person like LEWIS. Very proud men are fond of associating with persons beneath them in station. There never was a prouder man than Lord BYRON, and yet we know he was in the habit of mixing with persons in humble position. The next Witness, RICHARD FORD, who was a farmer in the neighbourhood of Tichborne, and filled the post of surveyor of roads for twenty-five years, says he remembers the building of the cairn of stones, and saw Colonel GREENWOOD and ROGER TICHBORNE selecting all the largest flints for that monument. The weather being hot, they worked with their shirt-sleeves turned up to their shoulders, so that the arms were exposed to view. He describes ROGER as a rather thin lad; and he says when he saw the Defendant after his return to England in Alresford-street, though he was altered in appearance he knew him perfectly well as ROGER TICHBORNE. JOSEPH SMITH, the next Witness, who is now a Gardener at a place near Devizes, says he was in the employ of Sir EDWARD DOUGHTY in the same capacity for the last six years of his life. He remembers young ROGER TICHBORNE perfectly well, and in February 1870, seeing the Defendant in Jermyn-street, he recognised him by his walk, which he says was more like that of Sir HENRY TICHBORNE than that of any other member of the Family. Now, Gentlemen, that is the last of the group of Witnesses who knew ROGER TICHBORNE in that particular neighbourhood. I have pointed out to you the good recollection of him which the great majority of those Witnesses possess of ROGER TICHBORNE, and also the familiar features which they remember. It may be asked why all the people remember him so well? I have already remarked that ROGER TICHBORNE was looked upon in the place as a great man. He was the heir-apparent of large estates, and consequently a person likely to be impressed on the memory of the humble people with whom he came in contact. There are faces which are never forgotten, especially if they are the faces of eminent persons. I remember very well that when I was very young I went to see THOMAS MOORE. I only saw him once, and though that is many years ago his face is as much before my mind at this moment as if he were actually present. Having thus recalled to your minds the recollection which these Witnesses have of the features of ROGER TICHBORNE, let me now invite your attention to Lady DOUGHTY'S recollection of them, as it appears in her deposition. She says, "I never saw any brown mark on his side, and never heard that he had any." It is hardly likely that Lady DOUGHTY could have seen or known anything about such a thing as that, if Lady TICHBORNE were not aware of it. French children are, I believe, not so constantly with their mothers, or so frequently visited by them, as English children.

The LORD CHIEF JUSTICE: I cannot agree with you in that. I believe the relation of parent and child are far more intimate, more affectionate, and in every respect more what they ought to be, in France than in England.

Dr. KENEALY: I bow to your lordship's superior judgment, but I am told that French mothers do not visit the nurseries of their children as frequently as English mothers visit the nurseries of theirs.

The LORD CHIEF JUSTICE: Unless there is evidence of these things I do not think they ought to be put forward as undoubted facts.

Dr. KENEALY: Gentlemen, Lady DOUGHTY said that ROGER was 5ft. 8in. or 5ft. 9in. high, and that, you know, is the exact height of the Defendant. She added that his eyes were dark blue; but that is evidently a mistake, and then she took on herself to say that ROGER'S hair—part of which is before you produced by the Family—is unlike that of the Defendant. You will judge of that answer and of that matter for yourselves. Lady RADCLIFFE, when she came to be examined, says that she was struck with the Defendant's voice being so similar to that of ROGER, and, Gentlemen, if anyone would be likely to recollect ROGER'S voice, it would be his Cousin.

The LORD CHIEF JUSTICE: Did that refer to the examination at the Law Institute?

Dr. KENEALY: No, my lord, to the examination in the Court of Common Pleas.

The LORD CHIEF JUSTICE: *She never had an interview with the Defendant.*

Dr. KENEALY: Gentlemen, she seems to found her opinion as to the Defendant, not upon his personal appearance, but because, as she said, he "knew nothing." That is an extraordinary answer for her to give. I have already dwelt on the fact that she said she never noticed the twitch in ROGER; but she admitted that there was something about the brow of the Defendant that recalled ROGER. I now come to the next group of Witnesses, namely, those who knew ROGER at Upton. The first is THOMAS DYMOTT, the Gardener, who saw ROGER coursing. He says the hair of the Defendant is practically the same as ROGER'S was. There is, he says, a likeness between the Defendant and Sir EDWARD DOUGHTY and Sir JAMES TICHBORNE, and that he is very like the latter in bulk and stature. He has no doubt whatever as to his identity. This Witness is puzzled about dates; and other things of the kind are put to him in cross-examination which I will not trouble you by referring to. THOMAS BUDDEN, an Innkeeper, in Southampton, is the next Witness. He worked as a Carpenter in 1848 and 1849, and mentions the extraordinary skill in shooting which ROGER TICHBORNE possessed. He says that on one occasion he threw up penny pieces about fifty times for ROGER to shoot at, and that he hit the penny in the air ten times at least out of twelve, showing the possession of extraordinary power of hitting a small moving object, which we all know the Defendant possesses. On cross-examination he is questioned over and over again as to the colour of ROGER'S hair, but all he could say was that it might be a little lighter then than the Defendant's is now; but he added that, after all those years, he could not carry the colour in his mind to a shade. CHARLES GAYTOR comes next. Early in life he lived at Poole, and frequently visited Upton. He does not identify ROGER, but was called in reference to another matter. JAMES HOWLISTON was the next Witness. He frequently saw ROGER, and asked him on one occasion to stand for Poole, a fact which I could not prove conclusively, owing to the death of many persons who could speak to it, and the exclusion of hearsay evidence. However, it is clear from the evidence of this Witness that ROGER took some part in the politics of Poole. He remembers ROGER coming to Poole with Mr. HOPKINS; that the leaders of the Liberal party there, having met, had some communication with him, and that is all I am enabled to prove, owing to the rules of law. I think you will be satisfied that there was a real or a jocular—I don't care which—attempt made to get ROGER to stand for Poole, and either would justify the statements the Defendant made in reference to that matter. But, independently of that, the Witness—a man of great respectability, one not likely to indulge in flights of fancy—

distinctly swears that the Defendant is ROGER TICHBORNE. He knew him particularly by his voice and by what he called a flash in his eye, which was caused, as he said, by moisture—and which he distinctly recollected and recognised. He spoke of the different appearance presented by the nose of the Defendant from the nose of ROGER, and that is remarkable, as we know the Defendant's nose was broken in Australia—as has appeared from the evidence of the surgeons. MARTHA LEGG, whose husband now keeps a temperance hotel at Poole, is the next Witness. She used to do ROGER'S laundry work, and knew ROGER well. She mentioned several incidents—such as giving her a sovereign and refusing to take change, and as to her giving him a dog-whistle instead the next week—as reasons for recollecting him. She never, she said, went into the house with the linen that she did not see him and have a conversation with him. He appears, indeed, to have been extremely affable to persons in that class of life. She has no doubt whatever that the Defendant is ROGER. She first saw him at his hotel. There were others present—I suppose WHALLEY, and BAIGENT, and ONSLOW, those wicked conspirators. She went up to the Defendant, and said, "How do you do, Sir ROGER?" to which he replied, "I do not know you." Of course if the confederates had only known that she was coming, he would have been well coached up by them. She mentioned her name as LEGG, but he did not recollect it. She then mentioned her maiden name, but that, too, he had forgotten; but after a time he said, "I know you now. You are my old laundress." To say that he was coached up to this—and that it was not the result of a picture of the past coming back to him—is, in my opinion, a species of insanity. He recollected after a time, seeing her and hearing her, the woman who had been called, when he knew her first, "the pretty laundress of Bath." To my mind, it is clear that the conversation that took place between them—as to the sovereign, the dog-whistle, and the stag pattern on his shirts—indicates the real ROGER. He perfectly recollected sending her trousers to wash when muddy up to the waist, after he had walked ashore from his boat when the tide was out. You see he was in the mud at Upton as well as at Howth; he used to come home from fishing with his hands and shirt-cuffs muddy. The Witness was of course examined about CARTER. The poor dead man, who cannot answer for himself, must be brought in; but you will judge whether anything was elicited from her, after all the cautions given to her, calculated to make you doubt the perfect accuracy or weaken the force of her testimony. She stated in her evidence that the Defendant used to change his shirts ten or twelve times a week. Now it is thought that changing shirts too often weakens the system, and probably that may be a reason that ROGER at that time was so delicate. Then comes a rather remarkable piece of conduct on the part of the Counsel for the Prosecution. Mr. HAWKINS, having asked the Witness a question, said to her, "You need not look at him," insinuating that she looked at the Defendant to see what she should reply. I objected to the style of cross-examination, and Mr. HAWKINS said "I saw her looking at him with my own eyes." So that our Witnesses were not even allowed to look at the Defendant without being hauled up for doing so. The Witness recognised the Defendant, she said, by his smile and his eyes, and by his calling her his old laundress, and saying "You are not a bit altered," which she added, "I knew I was not." She retains, as you saw, her fresh appearance up to the present. ROBERT BROMLEY, who follows next in order, is a Custom-House Officer at Poole. He knew Sir EDWARD DOUGHTY and ROGER, with whom he had a tussel for a lamed wild goose. The struggle ended by ROGER obtaining it, "because he was the best man," showing that, though he was weak in constitution, he had a good deal of stamina in him.

The LORD CHIEF JUSTICE: Did the Witness mention his age?

Dr. KENEALY: Yes, my lord; 47 in November.

The LORD CHIEF JUSTICE: Oh, then he was older than ROGER.

Dr. KENEALY: Yes, my lord, three years, and yet he was obliged to give in to him. He does not remember the date, but thinks it must have been in 1852. The appearance of the Defendant, he said, brings back Sir EDWARD DOUGHTY and ROGER TICHBORNE, and he has no doubt that he is ROGER. He recognized him by the upper part of the face and by his walk. The Witness mentioned a long conversation he had with the Defendant of which I knew nothing whatever, showing the miserable way in which I was instructed. The Defendant, he said, spoke of rabbit hunting on the island, and of poachers, all of which was true, and he perfectly recollected and himself spoke first of the wild goose chase, and the tussle for the wounded bird. He also recollected something the Defendant told him as to his (Witness's) getting "jolly well tight" at Upton House, and he said, in reply to the Court, "That was pretty nigh right, my lord." The Witness told him he hoped he would soon come into the Upton property, and be returned member for Poole, to which Defendant replied, "You will have one of the GUESTS—who had recently purchased a large property in the neighbourhood—member for Poole." All this conversation about the Poole election would, I submit to you, Gentlemen, be altogether above the comprehension of such a fellow as ARTHUR ORTON. The Witness admits that he got a sovereign from ROUSE to pay his expenses, and I suppose that is the usual bribe given to Custom-House Officers to induce them to commit perjury. Nothing whatever was got out of him on cross-examination to weaken his evidence, and he reiterates his conviction that the Defendant is the old ROGER. A photograph, which had not been proved, was put into his hands, and he is asked whether he could recognize it as being the portrait of Sir EDWARD DOUGHTY. I have reason to complain of this, for it turned out to have been taken when Sir EDWARD DOUGHTY was thirty years of age. What he said in reference to it was that it was not full enough for Sir EDWARD, and that was perfectly true. It was unfairly insinuated that the Witness had been coached by BOGLE, but that taunt on re-examination as well as on cross-examination he entirely and emphatically repudiated. His evidence is strong, and I ask you to lay great stress on it, noting the all-potent fact that he did get a sovereign to pay his expenses. ELIZA FROUD came next. She was the old lady who gave her evidence so much in the style of the old school which I am sorry to say is so fast disappearing. She used frequently to go to Upton and get flowers, and used to see ROGER there, but she could not be positive as to dates. She used to bathe her cats, which she said after her poor mother's death she idolised. ROGER once offered to bathe one of the cats, but she feared he would bathe it to perfection, and so saved the cat from him. He gave her a piece of music, "The Ivy Green," and she distinctly recollected ROGER, and identified the Defendant by his eyes and the general appearance of his features. "He once," she said, "offended a young friend of mine, a very pretty girl. When she looked at him he winked at her (alluding to the twitch), and when she looked up again he winked at her again. I would know him," she said, "amongst ten thousand people. There was a lazy look about him as if he was about to lie back." And you cannot but have seen the same lazy, sleepy look about this gentleman every day. When asked as to ROGER'S walk, the old lady said, "I beg his pardon, but he used to walk very badly." She perfectly recollected his eyes, his voice, his hair, and his walk, and she said, "He is certainly the old ROGER TICHBORNE of 1848, and the one I saw in 1852." With respect to the foreign accent, she said it was much less in 1852 than it was in 1848. It was wearing away; and I say it has altogether worn away in the bush, except when it very rarely breaks out. The Witness was asked about old BOGLE, and it will next appear, I suppose, that young BOGLE is engaged in coaching up everybody.

The LORD CHIEF JUSTICE: Is there any evidence in this Case to show that young BOGLE has been accused of that? If you make such allusions you will provoke observations on the other side.

Dr. KENEALY: Well, I beg your lordship's pardon. Gentlemen, the Witness appears to have got on very well with the other servants, but she could not get on at all with old BOGLE. Then we have HENRY CRABBE, the next of the Upton group. He was Under-Gardener to Sir EDWARD DOUGHTY, and had been Gardener for thirty-seven years. He saw ROGER TICHBORNE every day for some months shortly before he went away, and, pointing to the Defendant, he said, "There he sits." I do not think you will say of the gardener of thirty-seven years' standing that he is either a mistaken or a false Witness. He describes the features of the old ROGER, and positively identified the Defendant at first by the forehead and the upper part of his face as the man he had known so well. On being questioned by the Witness, he described the three dogs he had left behind him, and mentioned their names—"Betty," "Spring," and "Piecrust." Then on cross-examination he is asked about BOGLE. I wonder they did not call him "Bogy"—he is so often conjured up to frighten the Witnesses. ANGELINA HOMER, one of Sir EDWARD DOUGHTY'S servants, was the next Witness, and she has no doubt as to the identity of ROGER TICHBORNE with the Defendant. He had, she said, small hands and small feet, adding that she wore a pair of his boots and found them tight for her. My learned friend Serjeant PARRY got up and coolly said, "I have no question to ask this Witness." What does that mean? Did he, I wonder, put her down as a perjurer, or treat her evidence as being worth nothing? What ground was there for either conclusion? It is one of the mysteries of this Case which I confess I am unable to fathom. That ends this particular group of Witnesses, and now I come to the group who knew ROGER elsewhere than at Upton and Tichborne. The first is MARY ANN NEALE. She saw ROGER in 1849 at Melksham, and he had, she said, a bad walk, and bent his knee or knees. Then she mentioned the accident—the fall from the dogcart—and ROGER having actually washed his hands before her without turning her out of the room, as he ought to have done, according to the new code of morality we have heard of here. She had, she says, no doubt whatever that the Defendant is ROGER TICHBORNE. She had a conversation with the Defendant as to which I immediately called Mr. HARCOURT and all his Clerks to negative the insinuation that any one of them had given the Defendant a hint as to what the Witness had stated to them in her proof as to the accident. The Defendant, she said, told her of the accident, and you will be satisfied, Gentlemen, by the evidence to which I refer, that he had not been coached, and that Mr. HARCOURT or any of his Clerks had not been guilty of the base conduct of cramming the Defendant as to what he should tell the Witness. Of course poor Mr. GUILDFORD ONSLOW, whom the Witness never saw, is dragged in on cross-examination. Why they have such a hatred of this gentleman I am sure I do not know. You will not, I am sure, doubt the accuracy of the evidence given by this respectable Wit-

ness. I am reminded, Gentlemen, that ELIZA OAKLEY was called to rebut this Witness. You may have remarked that I have not referred to their rebutting evidence, and I do not intend to do so. It was, in my mind, a perfect failure, and was so contemptible that I shall make no further allusion to it. WM. HEWITT is the next Witness. He was in the service of Mrs. HOPKINSON as Footman, and was old Mr. SEYMOUR'S valet up to his death. He knew ROGER TICHBORNE, and first saw him in 1843, when he used to valet him at Knoyle and go out rabbit-shooting with him. He recognises in the Defendant the ROGER he knew in 1849, principally by the eyes, eyebrows, and forehead, and on being asked whether he (Defendant) resembled any members of the Family, he said he was very like ROGER'S grandfather, and in his walk like Sir JAMES TICHBORNE. The walk was something of a "spring with the heel off the ground." At the Trial in the Common Pleas it was attempted to be made out that ROGER TICHBORNE was a great friend of Mrs. HOPKINSON'S, but they failed to prove this. They don't appear to have been on extremely friendly terms, but that they saw each other and behaved civilly to each other I can well understand. The next Witness is THOMPSON, the Butler. He identifies the Defendant as ROGER TICHBORNE whom he used to know at Knowle House, and speaks to his having called to his (Witness's) recollection certain dogs and horses which he was wont to use before he left England. I was obliged to go through to this Witness a list of those persons who are supposed to have coached the Defendant, although I did it with great reluctance. He said, "I do not know of any connection between Mr. MORRIS and the Defendant. MORRIS did not believe in him at all." Further on he says, "Mr. WHALLEY did not tell me any of these things I was going to say to the Defendant, neither did Mr. ONSLOW nor Mr. CROOKE." MARY FITZPATRICK, who was Cook with Mr. JAMES TICHBORNE in 1848, is next called. She remembers ROGER at nineteen years of age, when he first entered the army. She was of the same age at the time. This Witness speaks of ROGER'S smoking and snuffing, and to calling him from the housetop on more than one occasion, he having gone there for the purpose of smoking. He was about 5ft. 8in. at that time, she says, and was slightly bow-legged, turning one knee in. She continues: "He had a twitch in the left eye, with dark eyebrows; his hands were small, and his feet slight, his eyes grey, and his voice very quiet." She identified the Defendant as ROGER by a flatness of his head and his ears. When asked when she had had the best opportunity of seeing ROGER, she replied that it was at the dinner table, at which she used to serve, there being only a small number of servants kept. She first saw the Defendant at the 'Rock Hotel' Clifton, and, as she says, knew him directly she saw him. His peculiar manner when she knew him as ROGER TICHBORNE seemed to be what it was now, she stated, and she also said there was the same turning in of the knee that he used to have when he was young. She asked him about the English governess who used to be in the Family, but he said he did not remember her. Mr. HAWKINS reserved his cross-examinstion of this Witness, and having had a night to think over it, he said he could not find it in his heart to cross-question the cook (a laugh) so that her evidence must be taken as being without the slightest censure. MADELINE TAYLOR is the next Witness. She was in the service of Mr. WHITGREAVE, and she says she remembers ROGER as a youth. He used to speak French, but with a bad accent. This Witness was taken ill in Court, but on the following day, when she had recovered, she was asked whether she knew the Defendant, and she identified him as ROGER by his thick eyebrows, his forehead, and a kind of nervousness at the left eye. My learned friend Serjeant PARRY cross-examined her, but to no material purpose.

In taking the next group of Witnesses—namely, those who knew ROGER abroad—I am departing from the chronological order, because I think it better to reserve the Carabineers for a subsequent stage—after I have done with those Witnesses in South America.

The LORD CHIEF JUSTICE: I thought you had already gone through the evidence of the Carabineers?

Dr. KENEALY: Not my Carabineers, my lord. (A laugh.)

The LORD CHIEF JUSTICE: You have been grouping them, and we have had the Carabineer group.

Dr. KENEALY: I have only mentioned them when speaking of certain marks on ROGER TICHBORNE.

The LORD CHIEF JUSTICE: *What time are you likely to take, then, with the remainder of your Speech?*

Dr. KENEALY: Your lordship will, I am sure, give me credit for not wishing to add one word to this Speech in Summing-up beyond what I think necessary. I must go through my Carabineers. (A laugh.)

Mr. Justice LUSH: *We already are several days beyond the time spoken of for the termination of your Summing-up.*

Dr. KENEALY: I hope you will not be too hard upon me. I can hardly give an approximation. I can hardly give a guess as to when I shall finish.

Mr. Justice LUSH: *This is the twentieth day.*

Dr. KENEALY: Well, my lord, I really could not make my address shorter.

The LORD CHIEF JUSTICE: On Monday next you will have been speaking 21 days—three working weeks—and your last Speech lasted an equal period. *That is surely long enough.*

Dr. KENEALY: I am as anxious to finish as your lordship is to get rid of me.

Mr. Justice LUSH: *There must be some limit to the Speeches of Counsel.*

Dr. KENEALY: Your lordships know that in a long Case like this there are many details to be noticed.

Mr. Justice MELLOR: I cannot remember a Case in which the Defence was conducted with so much detail comparatively. I never before heard a Counsel read in detail all the expressions of the Witnesses.

Mr. Justice LUSH: If the Legislature had contemplated the probability of such a Speech as this they would have been careful about giving Counsel the opportunity of Summing-up, I think. *I must say that I think such a Summing-up is an excess!*

The LORD CHIEF JUSTICE: There are some Witnesses whose evidence you were bound to go through, and upon whom you have not wasted a word.

Dr. KENEALY: Bear in mind, my lord, that it is three or four months since their evidence was given.

The LORD CHIEF JUSTICE: Oh!!!

Mr. Justice MELLOR: There are many whose statements you have very properly gone through, but when you come to a body of Witnesses like the Carabineers there is no necessity for going through their evidence in detail.

Dr. KENEALY: I only took three or four minutes to each, and I can't see how I could have done less.

Mr. Justice MELLOR: With some Witnesses you wasted no time because they were of importance; but when you come to Witnesses who say ditto to each other we surely may avoid a deal of repetition in the Summing-up.

Dr. KENEALY: I really don't know what to do, my lord.

The LORD CHIEF JUSTICE: Suppose there are a number of Witnesses who agree as to their recollection of the personal appearance of ROGER TICHBORNE, and who identify the Defendant in that way, surely those Witnesses might be dealt with *en masse?* If, on the other hand, there are those who, over and above their recollection of personal appearance, depose to conversations with the Defendant from which they gathered that he must be the right man, those conversations might be commented on, for they might be material. What I am complaining of is that you should think it necessary to deal separately with every Witness who says that ROGER TICHBORNE had "dark brown hair."

Dr. KENEALY: Up to this time I have merely called attention to the evidence of the Witnesses generally, and if I mentioned such matters it has only been done incidentally.

The LORD CHIEF JUSTICE: *I certainly did think that Monday would have seen the winding-up of your Speech.*

Dr. KENEALY: I expected that it would, my lord, and hoped so. I expected that I should have made better progress yesterday than I did, but I must go through these Carabineers.

The LORD CHIEF JUSTICE: *We must see that that does not pass beyond what is right and reasonable.*

Mr. Justice LUSH: Term commences on Monday next, and there is a vast amount of business standing over through this Case. We must exercise some discretion.

Dr. KENEALY: I hope I shall exercise discretion.

The LORD CHIEF JUSTICE: *We* must.

Mr. Justice LUSH: It is surely not necessary to go over every part of the evidence.

Dr. KENEALY: Not if the Witnesses had been examined yesterday or the day before: but your lordship must remember that some of them were here last summer.

Mr. Justice LUSH: For the last two or three days you have been employing your time quite properly, but I must say that a good deal more than half of your Speech has related to matters that should have formed part of your original Speech.

Dr. KENEALY: Is it of any real consequence whether I said it then or now? Suppose I had had to lengthen my original speech to thirty days, where would have been the gain? (Expressions of dissent from the Bench.) Well, I am unable to see where I have wasted time. Of course, after what your lordships have said I shall shorten my remarks in every possible way.

The LORD CHIEF JUSTICE: *If you do not soon conclude we must call on you to do so.*

Dr. KENEALY: If your lordships do I shall certainly ask leave to go on, and then your lordships must exercise your discretion.

Mr. Justice LUSH: I must say that I think that three weeks' discussion, even of such as this, is more than is necessary.

Dr. KENEALY: The Solicitor-General occupied twenty-six days in his Opening Speech alone.

The LORD CHIEF JUSTICE: Yes, but he opened the whole of his Case, and read the evidence which was taken by the Commissioners in Australia and Chili and elsewhere.

Dr. KENEALY: Surely he did not read the whole of it?

The LORD CHIEF JUSTICE: Indeed he did, for I myself read it in his Speech.

Dr. KENEALY: I consider I am going on with the Case as rapidly as I can. I am not conscious of having wasted a single moment. If you think I do waste time you will stop me, but at present, as I say, I am not conscious of having done so.

Mr. Justice MELLOR: What I said was really with regard to the Carabineers. There is a great body of them, and their evidence is almost stereotyped. It cannot be necessary to read what these Witnesses said.

Dr. KENEALY: I assure you, my lord, I do not intend to do so.

Mr. Justice MELLOR: I thought you did. I should be the last man to restrain Counsel in anything that he really thinks material, and which I believe there are reasonable grounds for considering material; *but I cannot allow it to go forth that there is no power in the Court to exercise their discretion.* At the same time, I entirely approve of the way in which you have gone through the evidence of some Witnesses, and I think in certain cases you have been right and just; but when you come to a certain class of Witnesses, I think you may, with fairness to your Client, exercise your discretion in the way of avoiding repetition.

Dr. KENEALY: I thought I was doing so. With regard to the evidence I have gone through, you will bear in mind I have not commented on what Witnesses have said unless they were brought into actual personal contact with the Defendant, and examined him.

Mr. Justice MELLOR: It is not very material to me whether I am engaged here or elsewhere, but as my brother LUSH suggests, there are other Cases in the world besides this.

Dr. KENEALY: There are, my lords, and all this difficulty might have been avoided if the Prosecution had been content to limit the indictment to a short charge.

The LORD CHIEF JUSTICE: How? If they had done so, they would have been guilty of a positive dereliction of duty, for it would have been impossible to try the Case in a satisfactory manner unless the all-important issue had been submitted to the Jury.

Mr. Justice MELLOR: I think so, too.

Mr. Serjeant PARRY: We did that which it was necessary for us to do.

The LORD CHIEF JUSTICE: They are all great issues.

Mr. Justice LUSH: I think your Client would have had fair ground for complaint if they had limited them.

Dr. KENEALY: Suppose that they had limited their issue to the Carabineers? (A laugh.)

The LORD CHIEF JUSTICE: That would have been impossible.

Dr. KENEALY: Gentlemen, if they had limited it to the evidence of the Carabineers—(a laugh)—the Case would then have been materially shortened. Of course, I shall do all I can to shorten your labours, those of the Court, and my own, at the desire of their lordships; but the Court will not ask me to pass over anything that I, in my conscience, think I ought not to pass over in the evidence of these Carabineers. At all events I must abide by your and the Court's opinion as to whether I am bringing before you anything irrelevant or not. At present I am not aware that I have done so, and, so far as my intention is concerned, I shall strive to avoid it, but I must go through and point out to you the prominent features of the evidence given so long ago. I now come to the evidence of those persons who knew ROGER TICHBORNE abroad. The first of these was Mr. BINGLEY, who made his acquaintance at Santiago, sat with him frequently, and dined with him at the table d'hôte. He said, "When the light was favourable I had no difficulty in identifying him. I knew him to be the gentleman I had met in Santiago under the name of TICHBORNE." The Witness further said he put many questions to the Defendant to try him, and that instead of objecting he (the Defendant) requested that he would continue to examine him, as "they were trying to make out that he was not himself." The answers the Defendant made to his queries were generally correct, and this and his recollecting of TICHBORNE'S manner, made him "as sure that the Defendant was the man he claimed to be as he was of his own existence." There are several suggestions made in cross-examination, which, however, I will not go through. Suggestions with the Prosecution appear to be almost everything; but it will be something remarkable to my mind if suggestions are all to take the place of proofs. I wish they would attend more to facts and less to suggestions. EMMA HELSBY is the next Witness, and she remembers ROGER TICHBORNE at Santiago, and identifies the Defendant as he. She saw the latter walking about for only two minutes, but that, she says, was sufficent to enable her to identify him. I hope I have been sufficiently brief in in my comments upon these Witnesses, Gentlemen, to satisfy everybody. I now call your attention to three Witnesses who knew ROGER at Rio. One is WILLIAM CLINE; another—whose name, I suppose, will provoke laughter in certain quarters—is JAMES BROWN; and the other is EDWARD MARSHALL. CLINE said TICHBRONE, on whom he waited, as steward, could drink almost any quantity of liquor without getting drunk. On being asked whether the Defendant was the person he had known at Rio, he said "He is the same person, but he has grown wonderfully stout." In cross-examination the Witness said when he saw the Defendant first at Poet's-corner, he did not recognise him for some two or three minutes, but ultimately he did, by the upper part of his features. He says OATES, BIRKETT, and TICHBORNE came on board ship in a state of intoxication, and this is strongly corroborative of Captain BROWN, for CLINE is not a person who can be called a doubtful Witness. JAMES BROWN, who is called—always in inverted commas—"Captain" BROWN, tells us he was engaged to a Mr. HOBBS, shipping chandler, at Rio, and that he was introduced to a Mr. TICHBORNE at an hotel there, with OATES and BIRKETT. TICHBORNE used to play billiards and drink heavily, and on one or two occasions he went to his (BROWN'S) house to sleep. Witness saw the Defendant at CRICHTON'S, and there identified him as TICHBORNE by a brown mark he had upon his left side, and a scar on his wrist, which scar you have seen, Gentlemen. OATES is called to contradict BROWN, and I have reserved my comments upon his evidence until now. I am going to ask you to believe BROWN and to disbelieve OATES, who is receiving at the rate of £700 a year from the Crown; and with regard to that I must say it is extremely unfortunate for the Prosecution that "rewards," at any rate, have been given to these Witnesses. BROWN says he knew the Captain of the 'Osprey'; and I suppose, Gentlemen, you are now satisfied that there was an 'Osprey.' If you will not believe the ten or eleven Witnesses whom I have called upon that point I may as well sit down and give up this man's Case; but I feel sure you are satisfied that there was an 'Osprey.'

The LORD CHIEF JUSTICE: Yes; but was it the 'Osprey' of which BROWN speaks?

Dr. KENEALY: BROWN remembers how TICHBORNE used to dress, and he speaks of OATES and BIRKETT coming with him on one occasion on board the ship drunk. I should think they had better have been in bed on board their ships than in the streets at Rio. This Witness was cross-examined in a most insulting manner. He is asked about leaving his wife and children destitute; but I suppose he was in the condition of most other sailors. The Prosecution complain that they got no list of our Witnesses. Yet, singularly enough, when they come here they seem to know a great deal more about them than we do ourselves. I will not take you through the long and harassing cross-examination to which this man was subjected. But if you remember his manner in the box I am not in any wise afraid of what has been said about the certificate. I am apprehensive that many persons continually make incorrect income-tax returns, and place their names to certificates the strict accuracy of which would not bear rigid investigation; and if henceforth all those persons are to be regarded as perjurers and felons I tremble for the consequences.

The FOREMAN: But how do you explain BROWN'S recognition of LUIE?

Dr. KENEALY: Simply by the supposition that he mistook LUIE for the real man. If twenty or thirty Witnesses have mistaken the Defendant for ARTHUR ORTON, why should not BROWN have mistaken LUIE for someone else?

The LORD CHIEF JUSTICE: But I think he identified him by name.

Dr. KENEALY: I don't care for that. Captain BROWN was at Rio beyond all doubt. Well, he sees this man LUIE at Poet's Corner, who tells him what he is coming to swear, and he traces in him certain points of resemblance to the Mate of the 'Osprey' he knew at Rio. You must bear in mind that LUIE is one of the most accomplished actors in the world.

Mr. TAYLOR (Juror): *Then do you admit that* BROWN'S *certificate was false?*

Dr. KENEALY: What certificate?

The JUROR: The certificate that he was elsewhere.

Dr. KENEALY: I do not mind what certificate he signed. There are two or three Witnesses who distinctly prove that he was at Rio; and I submit that LUIE, who we have seen is a most accomplished actor, imposed upon him by means of his pretended knowledge. I don't care about his certificate, and I don't care if it says he was not in Rio in 1854. The certificate must be wrong, because it is proved he was there then.

A JUROR: Did he then sign his certificate in ignorance?

Dr. KENEALY: I know nothing about that, and I don't care whether it was wilfully done or not. I believe he put down anything that came into his head at the time. No doubt he put a wrong name in it, but that may have been for the purpose of making up his time.

A JUROR: He said all the entries were fictitious. The certificate which he swore he had lost at sea was produced.

Dr. KENEALY: At first he did, but afterwards he said that he had put some false entries in. You may put them all down as fictitious. We have Witnesses who say he was there, and I believe the Witnesses rather than the certificate. I suggest to you that things analogous to making that certificate are done by persons of respectability every day.

The LORD CHIEF JUSTICE: He produced a certificate by which he makes himself not to have been at Rio then.

Dr. KENEALY: It was done for a particular purpose. It must not be taken because he has given an untrue certificate that he was not there.

The LORD CHIEF JUSTICE: But you are dealing with a man who admits a fraud, and who has recognised LUIE, who admits he has sworn falsely with regard to the 'Osprey.' You are in this difficulty, that there are two Witnesses of apparent respectability who positively contradict what BROWN says, so that we have to balance their testimony.

Dr. KENEALY: I can only say that he has made wrong entries in his certificate, but I put it to the Jury that he was at Rio, because he tells of things which happened at Rio which no man who was not there could have known.

The LORD CHIEF JUSTICE: You must bear in mind that he gives his evidence after the Defendant had made his statement about his being drunk at Rio.

Dr. KENEALY: The grand question is, Was he really at Rio, or not? In my humble opinion the preponderance of evidence is that he was. However, let us pass on to OATES. OATES is a

person we are told who ought to be believed in preference to BROWN, but I will put before you a fair test, and tell you why he ought not. There are reasons which appear on OATES's own testimony which appear to show that he had no sober recollection of ROGER TICHBORNE. As to his height, for instance, he said ROGER was as tall as himself, namely, 5ft. 7¼in. He must have known, if he had walked side by side with ROGER, that this was not so, and that he (Witness) was an inch or an inch and a half taller. He says ROGER was slighter built than he was, and had a narrow face. This is all he remembers about TICHBORNE, and I say these mistakes can only be accounted for by the statement of BROWN to the effect that OATES was drunk all the time he was with ROGER. OATES comes here with his new appointment in his pocket and said the Defendant was not TICHBORNE. He gets that appointment before he gives evidence.

The LORD CHIEF JUSTICE: He lost his ship by being kept here for this Trial.

Dr. KENEALY: But he saved his life, so he was a gainer on the whole by that. (Laughter.) All I can say about the matter is this. I have already told you that I believe the Defendant was deceived by LUIE, and if I did not believe that I would leave the Court this moment. And I say that an artful, clever man like LUIE, who could deceive the Defendant, would also be able to impose upon Captain BROWN. I don't care for losing one or two Witnesses in my Case. I can do without them. I will not abandon Captain BROWN till I am obliged to. I did not abandon LUIE till I was obliged, but if anybody can satisfy me that BROWN was not in Rio in 1854 I will abandon him as I did LUIE. But I have respectable Witnesses to prove it. I call your attention to CLINE, and I want to know why that man is to be discredited. I bring BROWN to Rio, and you ought to take a fair and charitable view of it, and say that he may have been deceived by an artful man like LUIE. OATES has no recollection at all of him. As to his limbs, he did not even remember the limp or the in-knee. He fences the question, and says he was dressed in tropical clothes. This is the man that has had the appointment granted him.

The LORD CHIEF JUSTICE: Captain OATES was examined on Commission before he had his appointment, and there was no discrepancy between his former statement and this one.

Dr. KENEALY: That, my lord, is evidence not proved here. Anyhow, he has got his appointment.

Mr. Justice MELLOR: No: there is no appointment. He is only employed occasionally.

Dr. KENEALY: Well, everyone can guess what he wrote to Mr. CHICHESTER FORTESCUE for. I think I know the nature of the letter.

The LORD CHIEF JUSTICE (with great anger): What? I don't suppose there is a more honourable man in the world than Mr. CHICHESTER FORTESCUE, and you cannot insinuate that he would be a party to any such transaction.*

Dr. KENEALY: Well, I can only say what ANTONY said of the murderers of CÆSAR, "They are all honourable men."

The LORD CHIEF JUSTICE: We know the particular sense in which that was written, and I am sorry that it should have been quoted here in the manner in which it has been. I can only say that it is one of those things which recoils upon the man who says it.

Dr. KENEALY: I do not want to reflect particularly upon Mr. CHICHESTER FORTESCUE, but I say it is an unfortunate thing that two members of the Cabinet have taken a prominent part in this Case.

The LORD CHIEF JUSTICE: Mr. CHICHESTER FORTESCUE has taken no prominent part in this Case.

Dr. KENEALY: I call it taking a prominent part when an appointment like this is given.

The LORD CHIEF JUSTICE: That is not taking a prominent part.

Dr. KENEALY: I say it is. It is one of the numerous incidents in this Trial, which for the sake of public notice, and even common decency, every man who is loyal to our laws and who wishes to see them respected should lament. And I must continue to think that no "honourable man" would have played such a part. But I pass on. I say it does not look well to make such an appointment. There is a most remarkable thing in the cross-examination of the Defendant in the Court of Common Pleas. The Defendant was asked about his drinking at Rio, and he said he was intoxicated in a house there, and he thought he was half-way between sober and drunk. HOSKINS says when he was on board the 'Bella' he left him near the wheel, with a small stick in one hand. He did not speak to him, but noticed that he came with a stagger. How was that known to the Defendant if he is not the man? Who could have told him that he was in that state, that he was using a stick, and that he was drunk on that morning? It could not be HOSKINS. He was not called by the Prosecution, because he had the diarrhœa. (Laughter.)

The LORD CHIEF JUSTICE: Yes, they called him.

Dr. KENEALY: Well, not for four or five months afterwards. We have it that he came on board with a stick, and made one or two staggers. Am I wrong in saying that he was staggering drunk? (Laughter.) Fancy this fellow staggering about the deck with a glass of grog in his hand!

Mr. Justice LUSH: The Witness said, "I fancy he had had a glass of grog;" not that he had a glass of grog in his hand.

Dr. KENEALY: HOSKINS did not tell him, and OATES did not. There is no man who could have told this man of his being drunk for two days before sailing.

The LORD CHIEF JUSTICE: He was not in that condition the day the 'Bella' sailed.

Dr. KENEALY: No, but he was the day before. He said he was drunk for two days. Still, the grand point is that he was leading a drunken life.

The LORD CHIEF JUSTICE: There is no evidence of it except the evidence of Captain BROWN, and he says they came on board to have something to drink, and took a little more than usual, as friends might do at parting. Having taken a little too much when leaving friends is a very different thing from being intoxicated for three or four days.

Dr. KENEALY: Well, Gentlemen, there is the evidence, and you must form your own judgment upon it. But there is nothing whatever inconsistent with his having been drunk for two days. I don't suppose he spent the whole of the day before on board the ship, but he does come on board in a state of intoxication, and am I wrong in suggesting that he went on shore, and continued in that state of drunkenness? I say that, knowing the habits he had fallen into, you are perfectly justified in thinking that in Rio he wanted to have no spy upon him, and he would not even permit MOORE to write letters home about him.

The LORD CHIEF JUSTICE: MOORE was not with him.

Dr. KENEALY: He had left him because ROGER had quarrelled with him about writing home.

The LORD CHIEF JUSTICE: No; he had left MOORE at Santiago because he was ill.

Dr. KENEALY: I say he got rid of MOORE because he was determined to have his fling out there, and he did have his fling. He would not have Lady DOUGHTY being communicated with and writing him perpetual letters. Fancy seeing him drunk at ten o'clock in the morning! What conclusion can we come to? A most damnatory one for this young man. There is plenty to justify one in taking more wine than usual at night, but not in the early morning. How is the Defendant to know of all this? MOORE could not tell him, for he was not there, and this man is his own recorder of the drunken vagabond life he led there.

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY continued: Gentlemen, I was pointing out to your attention that it is perfectly impossible any human being could have coached up the Defendant as to the condition of ROGER TICHBORNE when he was at Rio, and I hope the observations I have addressed to you will not be without their effect. With reference to that recognition of LUIE I wish to direct your notice to a remarkable passage in the "Pennyless Pilgrimage" of TAYLOR, the waterside poet, when he relates that, while dining with a number of gentlemen in Scotland, the conversation turned upon sea life in former times, when TAYLOR said, "I was at the taking of Calis, whereto an English gentleman replyed that hee was at the next good voyage after at the Ilands." TAYLOR answered him, "I was there also." "In what ship?" demanded the gentleman. "In the 'Rainboowe,' of the Queenes," replied TAYLOR. "Why," quoth the gentleman, "do you not know me? I was in the same ship, and my name is WITHERINGTON." "Sir," said TAYLOR, "I do remember the name well, but by reason that it is neere two-and-twenty years since I saw you, I may well forget the knowledge of you." "Well," said he (the gentleman), "if you were in that ship I pray you tell me some remarkable token that happened in the voyage." TAYLOR amongst other things, related that he and thirteen others were weather-bound on one of the isles of the Azores for five days, and almost famished for want of food, until TAYLOR found in a cave or rude habitation fifteen small loaves of bread, which he secured, and emerging from the cave stood mumbling with his back against it, when upon the sudden a gentleman came to him and said, "Friend, what are you eating?" "Bread," was the answer. "For God's sake," said he, "give me some." "I gave him a loafe, which he received with many thanks, and said that if ever he could return it he would. I had," says TAYLOR, "no sooner told this tale but Sir HENRY WITHERINGTON did acknowledge himself to be the man that I had given the loafe unto two-and-twenty years before."

The LORD CHIEF JUSTICE: What evidence is there of that? Really, reading a passage from a book like that is wholly irregular, and I think when it comes to a question of time, that a great deal of time has been wasted in reading extracts from books which not being in evidence can have no weight.

Dr. KENEALY: I thought it had something to do with the Case, or I would not have taken up time reading it. I thought it might show the Jury how the mention of incidents might revive a recollection of the past. The way I was going to put it to the Jury was this: that LUIE might have mentioned something to BROWN to convince him he was the man he had known.

Mr. Justice MELLOR: Unless such references are proved as facts, they can have no weight.

* The real or simulated rage and indignation of the Chief Justice at this allusion to his friend Mr. C. F. must be left to the reader's imagination. They really cannot be described. They conveyed the idea of Dr. KENEALY being quite as great a criminal as his Client.

Dr. KENEALY: Gentlemen, I pass from the evidence of BROWN, and call attention to that of MARSHALL. He is a shipowner at North Shields, and was at Rio in 1854. He was introduced to a person named BROWN. He cannot say whether the Witness we had here was the man he had known or not, but he establishes the fact that there was a BROWN in Rio; and I ask you to believe he was the same BROWN. I now come to the evidence of LODER. He was the Captain of a vessel, and was at Rio in 1854, and was part proprietor of the Exchange Hotel there. He knew BROWN, not as Captain BROWN, but as clerk in a ship-chandler's store there.

Mr. Justice MELLOR: Does he identify the man?

Dr. KENEALY: Oh yes; and in cross-examination it is not pretended that it is a different BROWN that is referred to. The next Witness is one of a miscellaneous character, whom I wish to mention before coming to the Carabineers. I mean JOHN DORRY. The only thing for which I called him was to prove that the Defendant is a good fly-fisher, and one of my contentions to you is that a man can only become a good fly-fisher after long practice.

The LORD CHIEF JUSTICE: Is that so? Have you proved it?

Dr. KENEALY: No, my lord; I have not proved it.

The LORD CHIEF JUSTICE: Is it certain?

Dr. KENEALY: Well, I will withdraw the statement, and substitute for it the remark that it is possible for a person to become a good fly-fisher without any practice. (Laughter.)

The LORD CHIEF JUSTICE: I believe that is equally uncertain and equally untrue. Fly-fishing is a knack which some people acquire very quickly, and others cannot acquire in the whole course of their life.

Dr. KENEALY: Well, Gentlemen, it is possible for the Defendant to have seen that copy of the 'Illustrated London News,' and it is possible for him to have become a good fly-fisher, even if he is not ARTHUR ORTON. That is all I say about it. (A laugh.) One of the episodes against this unhappy man whom I represent—unhappy in every way—indeed, I do not believe there was ever any man for whose destruction so many wretched contingencies conspired—one of the episodes in this Case which have been made a great deal of is what the Prosecution chose to call the Brighton Card Case. I must first of all recall your attention to the evidence the Defendant himself gave as to this matter because a sedulous attempt has been made by the Prosecution to convey to your minds an impression that the Brighton Card Case, to which the Defendant referred in the Court of Common Pleas, is the same as that in which a man named HAMP was the Prosecutor, and I say that, so far as I can discover, there is no ground for any such suggestion. All he says is that he lost £1,500 in the sitting-room at the Bedford Hotel in Brighton, and mentions one of the BROOMS as being connected with the affair. What the particular transaction was I have not been in a position to show you, but on being interrogated about it, the Defendant evidently shirked the whole thing as one he was anxious to avoid going into. He is asked which of the BROOMS it was, and replies, "I don't know; but I think it was the bigger one—HARRY." This answer shows a personal knowledge of the BROOMS, and it is not pretended that ARTHUR ORTON was ever in the company of either of them. He denies that STADEN or JANES, the men whom we know to have been parties to the other Card Case, had anything to do with the matter; and nevertheless it is insinuated that he meant the same Case, and Witnesses are called to prove that no such person as TICHBORNE was mixed up with it. If you as English Jurymen—and a higher name you could not have—are prepared to endorse such conduct, I can only say that I shall indeed be surprised. I cannot imagine how they could have gone through the solemn farce of calling these Witnesses; for the letters of Lady TICHBORNE and the statements of the Defendant state that it was something which was known to him and his Mother only.

The LORD CHIEF JUSTICE: On the contrary, he says it was know in their circle.

Dr. KENEALY: Yes, but not to anyone outside the Family, and therefore to call these Witnesses to speak about it was a farce, and nothing but humbug on the part of the Prosecution.

The LORD CHIEF JUSTICE: Really, Dr. KENEALY, that is hardly Parliamentary language.

Dr. KENEALY: Well, my lord, I am sorry for it.

The LORD CHIEF JUSTICE: *It is not forensic style. It is a piece of slang which may be used in ordinary conversation, but it is out of place in this Court.*

Dr. KENEALY: Gentlemen, Mr. AVERY, the Clerk of the Peace, is called to say no Mr. TICHBORNE was connected with the Case that came before the Court. Mr. CHASE is called next, and this farce is gone through. The 'Osprey' farce, Gentlemen, was farce enough, and the gold-fever farce was farce enough, but this is as bad as any of them. Mr. HAWKINS gravely asks Mr. CHASE this question, the Defendant having distinctly and positively sworn that he never heard of this Case: "Was there any person of the name of ROGER CHARLES TICHBORNE who was a Witness in the Case?" You have heard what the man swore. Humbug may not be a Parliamentary term or a forensic, or a Westminster Hall term, but delusion is a Westminster Hall term, and I say that all this is delusive. Probably every one of you believed to this moment that the Defendant pretended that he was connected with that Case. Now, you know that he did not, though all their cue was to prove that he did. Then we have Mr. WETHERBY, who was called to produce the "Racing Calendar" to prove that the Brighton races of 1852 were on the 4th and 5th of August, which is a time, I believe, when ROGER TICHBORNE is sworn by someone to have been somewhere else. That is the whole of the evidence for the Prosecution offered on the subject. Let us see whether it is possible for me to answer this Card Case; and first of all I ask you to bear in mind the observations I addressed to you before on this subject, and the curious things contained in the answers of Lady TICHBORNE to the Defendant in writing to him about it. These I consider almost conclusive in my favour. What I put to you now is that if there was no such thing as his being swindled out of the money, how could he have been such a fool as to mention it to his Mother as one of the things by which she would recognise him? He has said it was known in their circle, but the Defendant has no more idea of what "their circle" means than I have of the kind of atmosphere there is in the moon—if there is any atmosphere at all. (Laughter.) But I say he used that as a crucial test, and that unless there had been a Card Case in which he was involved he would not have dared to speak of it; and I also say that it is perfectly impossible for an impostor to have hit upon such a thing. There is no getting out of that. And he told this to Mr. GIBBES. Mr. GIBBES said he understood that the Defendant had been swindled at cards, and he said that the Card Case at Brighton was one of the chief things mentioned to his Mother.

The LORD CHIEF JUSTICE: That was at Sydney. He told him that as a reason for having enlisted.

Dr. KENEALY: I do not care for his reasons. He mentioned the fact to Mr. GIBBES, and told him he had been swindled at Brighton. Why should he have given a false reason? Common sense must take the view of it I have indicated. I will be asked why I did not prove all about this Card Case? I would like to have known how I could have done it. There is an old legal maxim, "*Lex non cogit ad impossibilia.*" The law does not expect anyone to do an impossible thing. That may be a bad maxim, but it is my reason in this Case. We know that ROGER TICHBORNE was at Goodwood Races, and Lady RADCLIFFE chooses to say he came back the same night. It is an extraordinary thing that she should remember this so long afterwards; and I ask you to believe that she may have been mistaken, or, at all events, that the Defendant fell into bad company there, and was either swindled there or went with them to Brighton. I don't care how or where it happened. The Defendant is not to be relied on in his statements. Why, if he stood up in Court and said he was ARTHUR ORTON, it would make no impression on my mind—not the slightest. (Laughter.)

The LORD CHIEF JUSTICE: Do you mean to say we are not to believe him when he says he is ROGER TICHBORNE? (Laughter.)

Dr. KENEALY: Gentlemen, he was at Goodwood Races in 1849, and from Goodwood he might have gone to Brighton.

The LORD CHIEF JUSTICE: He went with Mr. ALFRED SEYMOUR and came back with him.

Dr. KENEALY: I cannot discover any information about it. How could I? Was I to call BROOM the dead man, or BROOM the man who cheated him? One is dead, the other is I don't know where; but even if I had had them here could I have got them to swear to it? It is a farce to ask me to prove such a thing. I cannot do it. You see yourselves it is impossible. Even, however, if both these men survived—if they were both in the country, and I were to put them in the box, and they were to swear, "We did swindle him out of £1,500 or £1,600," Mr. HAWKINS would have said, "What a pair of swindlers you are! No Jury will believe you," and probably—after insinuating that WHALLEY, ONSLOW, and the rest had aided them—would have said, "Now you may go about your business, Mr. BROOM." (Laughter.) Therefore you see it was quite impossible for me to have done that. What I could prove I have endeavoured to prove. It is exceedingly little, I confess. Nevertheless, it must go for something, because it does bring ROGER TICHBORNE into communication with the BROOMS. WILLIAM BURNELL is the first of my Witnesses on this head. He says that in the autumn of 1850 he was at BROOM'S, and heard TICHBORNE say to him, "If you don't refund me the £1,500 you swindled me out of I will prosecute you." Is that true or false? Of course, every Witness I call is a perjurer, and therefore it must be false. What does that refer to but a Card Case? What else can it refer to? OWEN CROWHURST is the next of my Witnesses. He was an Inspector of Police at Brighton, and made inquiries about the Card Case with which HAMP was connected. I called him to see if he could give us any information about the other Case; but the moment he was asked anything material, Mr. HAWKINS objected.

The LORD CHIEF JUSTICE: Is not all that beside the question? The HAMP swindling was in 1851. ROGER TICHBORNE was not in England at that time.

Dr. KENEALY: He says he was to make inquiries about a young man at the 'Bedford.'

The LORD CHIEF JUSTICE: Yes, but the whole context shows that that was in 1851.

Dr. KENEALY: If the context shows that, there is an end of the matter. I told you that my evidence was very slight. At all events, there was some young man who had been staying at the 'Bedford' who had been defrauded at that time. An inquiry was made after him; it was not HAMP; but I am shut out from

No. 55.—BULL LEAPING THE BARRIERS OF THE RING, SANTIAGO.

going further to prove it was ROGER TICHBORNE—but can you doubt the fact? JOHN TAYLOR is Proprietor of the Royal Hotel at Derby, and lived in 1849 at Finchley, the year that ROGER TICHBORNE was at Goodwood Races. TAYLOR had a bet with JOHNNY BROOM, and went to his house, the 'Rising Sun,' in Air Street, for his money. When there he saw a young gentleman named TICHBORNE who was drinking champagne. The next Witness in order was Mr. WHALLEY, who was called to negative the insinuation that he had coached some of the Witnesses, which he indignantly denied.

I now commence my Summing-up of the evidence of my Carabineers, in which I shall be as brief as possible, for I fear I have already tired you fearfully and bored you awfully. I must, however, do my duty. I will not have this Defendant's blood upon my head or on the heads of my children, whomsoever it may fall on. I commence with Serjeant MUNDAY. He recollects ROGER perfectly well, and identifies him by his features and voice, and in every other way. He has no doubt, and never had any doubt, but what he is the real man. Mr. BARLOW is next. He knew ROGER at Canterbury, and identifies the Defendant as that man. He describes ROGER as lank and loose, and this, I submit, conveys the same idea as the evidence of the Witnesses who said his skin was loose. Mr. BARLOW was not cross-examined, but simply insulted, and treated like a rascal. So far as I could see there was nothing to shake our confidence in his honour and truthfulness, though he may have eccentricities, and have been struck with an inscription of the Mormon Temple of "Good will to all men." PATRICK HOGAN comes next. He was three years and nine months in the Carabineers, and has not the least doubt that this is ROGER CHARLES TICHBORNE. In his cross-examination CARTER and M'CANN are referred to just as if it were possible for them either to delude or to bribe all these men. JAMES BEHAN is next. He remembers Mr. TICHBORNE well, and speaks to having gone to chapel at Miss HALES'S. He has not the slightest doubt this is he. THOMAS MARKS drilled with him in the troop when he joined, and says this is he. He had two interviews with him, and had conversations which showed the Defendant's knowledge of things that had occurred in the regiment. PATRICK BARRY follows. He describes ROGER very fully, and sees his features in the Defendant. Now I come to MICHAEL CARROL. He used to walk with the other Roman Catholics to Mass, and is quite sure the Defendant is his old officer. The next is M'ELLENEY. He recognises all the features of ROGER TICHBORNE in the Defendant. He was cross-examined by Serjeant PARRY, but unfortunately for my friend's Case, he did not make much out of him. GEO. WYLDE used to wait on Mr. TICHBORNE, remembers him well, and says this is he. WILLIAM TRY is another old Carabineer who identifies the Defendant, and like all the rest of my Witnesses was taken through the peculiar features. WM. DAVIS went all through the foot drills twice a day for a twelvemonth with ROGER TICHBORNE, and therefore must be supposed to know something of him. Notwithstanding all his theological studies, Mr. TICHBORNE was at this time under the impression the Devil had got into his room, and called the Witness to drive him out. You must remember the account he gives of the ridiculous scene which took place when the Witness and his officer, all shaking with fear, entered the room, and found the Devil was only a donkey. Is that consistent with the polemical studies which STORES SMITH told us about, or even with ordinary sense? Why, if you believe this man ever knew anything, I fancy you will almost believe that donkey was what ROGER TICHBORNE believed. (Laughter.) TIMOTHY MARKS was a non-commissioned officer in the 4th Dragoon Guards. He knew Mr. TICHBORNE, and recognises the Defendant. JOHN CHEETHAM, another Carabineer, remembers TICHBORNE and gives a full description of him. He saw the Defendant at Macclesfield, and had an interview with him, which confirmed him in his belief that this was the man. This Witness—I was going to call him unfortunate, but that applies to all my Witnesses—was cautioned by Mr. HAWKINS to be careful, but nothing was got out of him to shake his credibility. JAMES CAIRNS gives important evidence as to personal identity, and also as to conversations. In cross-examination the inevitable CARTER and M'CANN are brought up. What a lucky thing, Gentlemen, it is for them that CARTER is dead! They must offer up prayers to heaven that M'CANN were so. (Laughter.) And yet it is all for the sake of what is sarcastically called truth and justice. Lucky it is for some people that ghosts cannot walk, or we would have CARTER down at Westminster Hall over and over again. Mrs. CAIRNS remembers everything about ROGER TICHBORNE as perfectly as if she had seen him yesterday, and recognised the Defendant whenever she saw him. JOHN LESSWARE, the Trumpet-Major, remembers Mr. TICHBORNE quite well, describes him, and identifies the Defendant, both by his appearance and his answers to test questions. He was subjected to a long cross-examination as to the hair, feet, voice, and accent, and I don't know how many things else; but nothing came of it whatever.

[The Court adjourned till Monday at half-past ten.]

ONE HUNDRED AND FIFTY-SIXTH DAY.——MONDAY, JANUARY 12TH, 1874.

The Trial at Bar of the Claimant for perjury was continued in the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH.

On taking his seat, the Lord Chief Justice expressed his pleasure at seeing Mr. HAWKINS back again;* and the learned Counsel replied that he was much better, but that he had been very unwell.

Dr. KENEALY, resuming his Summing-up of the evidence of the Carabineers, said—Sergeant-Major BRADSHAW remembers ROGER TICHBORNE perfectly well, and, what I think is of great importance, he recollects his height. He also remembers the twitching of his eyebrows; that also is of great importance, because GOSFORD denies the twitch altogether; and I shall presently ask you to reject his evidence on that ground. This Witness, on cross-examination, says that he recognised a little of the old French accent. ANN LESSWARE, the wife of a trumpet-major, also recognises him perfectly by his voice and appearance. In a long conversation, he reminded her of various things which it is quite true he might have learned from other persons, if you accept the suggestion of the other side; but I must remind you that it is a mere suggestion, and that it does not rest on any basis of truth. This Witness was also submitted to the ordeal of the photograph, but that I shall always maintain as very unfair, because there are persons whose eyes are so constructed that they cannot recognise resemblances in photographs or daguerreotypes. JOSEPH BRITTLEBANK is the next Witness, and, besides identifying the Defendant from his personal appearance, deposed to having recognised the Defendant's voice before he had even seen him. More powerful evidence it would be impossible to conceive. In like manner the Defendant at once recognised the Witness, and there is no pretence of collusion, or for suggesting that anyone had innocently communicated to the Defendant the fact that the Witness was wrong, for BRITTLEBANK states that no one present at the meeting knew him. MATTHEW GULL, another Carabineer, also recognised the Defendant. He states that as soon as he heard of Sir ROGER'S landing, his features seemed to come before his mind's eye, and he was satisfied of the Defendant's identity before he ever exchanged a word with him. It was thus a case of personal recognition, and had nothing whatever to do with conversation. In this instance, too, the Prosecution went through the farce of putting photographs into the hands of the Witness. A vast amount of time was thus wasted—with what object I am unable to form a conception: unless it were to mystify us all—here, and in the outside world. I suppose you will be asked to say that because some of the Witnesses did not recognise the photograph they did not recognise the Defendant. But they all swear they did, and I presume they are better judges on that point than the learned Counsel can be.

A JUROR: The Witness said he thought it was like ROGER. A previous Witness said the photograph was a very good likeness.

Dr. KENEALY: I know some of the Witnesses say it is, but that is a matter as to which you will exercise your own judgment. This Witness was with ROGER for two years and eight months, and he has no doubt that the Defendant is the man. The next Witness, JAMES HOLMES, remembers ROGER from 1849 till 1852, and pointing to the Defendant, he said, "That is the gentleman there." He described ROGER TICHBORNE minutely, and recognises the old features in the Defendant. On cross-examination, he said he had not a shadow of doubt that the Defendant is ROGER TICHBORNE. LAURENCE RICHMOND, the next Witness, was principally called in reference to the Miss HALES question, and he recognised the Defendant from his appearance in general, and from his voice. He did not detect the old French accent, and I submit that if the Defendant were an impostor and not the true man he would, as he could easily have done, assume it, to convince the Witnesses as to his identity. WILLIAM BILBY was next examined, and he remembered ROGER at Canterbury and recognised the Defendant as the man. Next came WM. BIRD, also an old Carabineer, and now, like the other Witnesses, occupying an honourable and responsible position. He remembers ROGER TICHBORNE in the regiment, described his features, and recognised the Defendant as his old officer. This Witness describes a row amongst the officers, and the drawing of a sword, and you can imagine these young officers, probably in a drunken condition after mess,

* This was done pointedly, by way of contrast to the silence with which Dr. KENEALY was received by the Bench, after *he* had been prevented by illness from continuing his Summing-up.

squabbling, and perhaps drawing swords. The Colonel did not, it is true, know of the brawl, but that we can very well understand. He had not been told of it; in fact, if he had not exercised great discretion he would have been constantly holding courts-martial. If he heard of it, he may have regarded it lightly. Colonels must often exercise judgment and forbearance, or else they would be perpetually court-martialling their officers; and in this case I admire very much his good sense.

The LORD CHIEF JUSTICE: This was not a mere brawl. The Witness said that the sword was thrust with such violence that it penetrated the wall and broke in two.

Dr. KENEALY: Still it may not have been a very serious matter.

The LORD CHIEF JUSTICE: I understood the matter very differently. The Witness said that ROGER TICHBORNE drew his sword, and made a pass at another officer with great violence, but the weapon ran into the wall and broke. It seems to me to have been a very serious matter indeed.

Dr. KENEALY: I am putting it, my lord, as one of much less importance.

The LORD CHIEF JUSTICE: It may be that it never reached the Colonel's ears.

Dr. KENEALY: That, I submit, is the solution of it. The spirit which actuated the Carabineers was a high one, and not one of them was likely to carry the news to the Colonel. This Witness was also shown the daguerreotype, and he saw no likeness in it to ROGER TICHBORNE. The next Witness, HAMLET, recognised the Defendant as Lieut. TICHBORNE by his voice and by his walk, and he has no doubt as to his identity. It is suggested that he saw BAIGENT, but there was no foundation for the question, the constant repetition of which I complain of as leading you to believe that where there is so much smoke there must be fire, and that undue means were used to influence the Witnesses. No ground whatever was shown for these insinuations. The next Witness, BOARDMAN, also recognised the Defendant, and he described him, stating that he so narrowed down from the shoulders that he could not keep on his belt. In fact, my illustration that the Defendant is, as ROGER was, shaped like a turbot, is borne out by this Witness's evidence. In conversation the Defendant told Witness how he had got a mark he bore on his nose—arising from the blow of a stone during a charge at the Limerick election—which you will remember is mentioned in one of ROGER'S letters. The Witness stated that he recognised ROGER'S voice, and he was asked the ridiculous question whether he recollected the grandmother's voice. He was subjected to a very long cross-examination, but nothing was elicited calculated to weaken his evidence. A suggestion was made that MARKS coached the Defendant in regard to this Witness, but it turned out to be utterly groundless. You are asked, in fact, by these constant suggestions, to believe that there was a wicked confederacy amongst these respectable people to aid the Defendant in the perpetration of a fraud. PETER WALKER, the next Witness, an old Carabineer, also positively identified the Defendant as ROGER TICHBORNE. Gentlemen, surely this body of evidence must at least create a doubt in your mind in the Defendant's favour? I do not want your verdict on a doubt. I ask an acquittal on the ground of the great preponderance of evidence on this gentleman's side.

The LORD CHIEF JUSTICE: You don't mean to say, Dr. KENEALY, that if the Jury found for the Defendant you would reject their verdict because it was based on a doubt of his guilt?

Dr. KENEALY: Oh, no, my lord; I am not so silly as that. I will accept their verdict on any ground, but I say that there is no room for doubt. My evidence, I submit with confidence, leaves none whatever. Gentlemen, the wife of the last Witness, who used to attend on ROGER in the regiment, is also positive in her recognition of the Defendant from his voice and the length of his face, of which Captain FRASER also speaks. This Witness was not cross-examined. I do not know why. No doubt the Prosecution had good reason for adopting that course. CHARLES PHILLIPS, formerly a Carabineer, now a prison warder, knew ROGER well, and also swore to the Defendant being the man. The next Witness was GEORGE ELLIOTT, who recollected TICHBORNE joining the regiment, and he recognised the Defendant by the upper part of his face—particularly by his eyebrows. He did not know him at first, but gradually the features came back to his mind. He also recognised his peculiar gait when he saw him at a pigeon match. The next comer, EDWARD HORNIBROOK, remembered ROGER distinctly, and has no doubt that the Defendant is the man; and he spoke positively as to the twitching, which Mr. GOSFORD would have you believe he never saw. When the Witness had been examined by me, Mr. Serjeant PARRY made the extraordinary statement: "If I had my way I would not cross-examine one of these Carabineers, but I have not." What my learned friend meant by that I cannot tell. You will, I think, put a very different estimate upon the evidence. ALEXANDER ADAMS describes the Defendant as a big raw-boned man; by which I suppose he means a tall thin one.

A JUROR: He afterwards said the Defendant was a man with big bones and a loose skin.

Dr. KENEALY: Yes, that is probably what he meant. He speaks to the twitch, and says that when the Defendant came to Newcastle, he, like everybody else, was anxious to have an "eyeful and a mouthful" of him. From that I infer that he is addicted to metaphorical expressions. I can understand what he meant by an "eyeful," but how he was to get a "mouthful" of my Client I am sure I cannot tell. However, he says that the Defendant is Sir ROGER if ever there was one on earth. He questioned him as to what the Duke of CAMBRIDGE said to the regiment, and states that the answer he received was quite correct. Mr. HAWKINS smilingly said to this Witness, "You may go," and go he did. (A laugh.) JEREMIAH COLE identifies the Defendant, and says he knew him by his features the moment he saw him again. This Witness was subjected to a very long cross-examination, but I don't see that anything particular was got out of him. JAMES LINDER, formerly Farrier-Major, was in the same Troop with ROGER, and is positive that the Defendant is the man. He recognised him after a time by his features generally, and by his voice, and he had known him for several years. THOMAS DUNNE, a Sergeant, joined the Carabineers in 1847, and knew ROGER down to 1852. He says he was about 5ft. 9in. high, and he described his appearance and features. He recognised the Defendant after a few minutes' conversation with him by his features and his walk, and he said emphatically, "I say he is ROGER TICHBORNE." The next Witness, FREDERICK MATHER, remembers TICHBORNE well, and was in the same drill with him. He says ROGER was 5 ft. 9 in., or 5 ft. 9½ in. high. He recollects him perfectly, and swears that the Defendant, whom he saw in Leeds in February, 1868, is the man. This Witness is now an Interpreter in the employment of the London, Chatham, and Dover Railway Company at Dover, and you will not doubt that he is convinced, as he says he is, as to the identity of the Defendant with his old officer. Being an interpreter he may be taken as an expert, and he says that he detected some of the old French accent that ROGER had in the regiment. He was also positive as to the Defendant's gait, and I suppose it will not be suggested that he was coached up to that matter. It was insinuated that the Witness gave his name to BAIGENT, who told the Defendant of it, but that he distinctly denied he had done. On cross-examination he said that he did not detect the French accent when the Defendant spoke, but did when he read at the Witness's request. The next Witness is JOHN GILES, who remembers TICHBORNE in the regiment, and he identified the Defendant as the Carabineer Officer he had known, and of whom he speaks as "the awkwardest Officer he ever saw." "His walk," he said, "was quite sufficient for me. I swear he is the man and no other." He failed to see any likeness to ROGER in the Chili daguerreotype, and indeed ROGER himself must have thought it a bad likeness, as he said he looked like a red-skin Indian.

The LORD CHIEF JUSTICE: Do you mean to say that the photograph was like a red-skinned Indian?

Dr. KENEALY: I am only giving his description of it.

The LORD CHIEF JUSTICE: He said it was a very fair likeness, stating that he was more like a red-skinned Indian, and they might not know him again.

Dr. KENEALY: I only use his own words. What he meant we cannot discover now; my Client knows, but I cannot call him. WALTER MOODY, an old Sergeant in the Carabineers, and now a prison warder, came next; and he knew ROGER TICHBORNE well down to December, 1851. He spoke of him as having a "contrary, ignorant walk." He had, he said, no respect for himself in walking, and he saw the same fact in the Defendant. He also recognised the features of ROGER after he had spoken to the Defendant for a few minutes. The Witness asked the Defendant whether he remembered anything that had occurred in Cahir Barracks on a Christmas Day; and the Defendant, after considering for fully ten minutes, told him of two men absent from chapel, who were drunk and punished. In the Court of Common Pleas the Defendant had not ten seconds to search his mind or recall events to his recollection; but here in a private room his memory revived. He could even tell the Witness the number of his horse. How it came to pass that he recollected nonsense of that sort and forgot important matters I cannot say. It may be that there was something peculiar about the horse which made him recollect it. On being further questioned by the Witness, the Defendant, after some consideration, told him that WILLIAM BROWNE was known in the regiment as DANDY JIM. How he came to remember these trivial matters I cannot, as I say, explain, but so it is. His military education may have something to say to it, but I think you will be convinced that the answers show he must be the man he represents himself to be, for he could not by any possibility have known that these questions—which he answered truly—would be put to him. As usual on cross-examination, the name of Sergeant-Major MARKS is put to the Witness, but he stated that he had not spoken to him before he saw the Defendant, and it was lucky for him he had not. If he had, it would of course be said that he had been coached. In re-examination the Witness said the Defendant did not volunteer his statement to him, but they came out in course of conversation and in answer to questions. These facts will receive your most careful consideration. They will dispose entirely of Mr. HAWKINS'S Speech. We all know the effect that Speech produced. Everybody was going about London saying, "Oh, he must be ARTHUR ORTON. After Mr. HAWKINS'S Speech there is not a ghost of a chance of his being ROGER TICHBORNE." That impression may still remain in some degree upon your minds; and if so, I wish you to disabuse yourselves of the fact and compare the Speech with the facts. HENRY RAINES is the next Witness. He said he saw ROGER TICHBORNE

every day in Dublin after he joined, and identifies him instantly and without doubt. He describes the scene on board the steamer when the baggage took fire. He says ROGER asked him whether there was any ammunition on board. He answered that there was, whereupon the young officer said, "Oh, mein Gott! we shall all be blown up." (A laugh). That is the exclamation of a perfect, downright idiot. He was apparently a person of no presence of mind or courage. Just when he should have shown it, we find him giving way to sentiments like that.

The LORD CHIEF JUSTICE: I observe the Witness makes him speak with a German and not with a French accent—"Mein Gott."

Dr. KENEALY: Witness said he was an ugly style of officer, with a stooping head. That bears out what Mrs. NANGLE, one of those graphic ladies, said about his turtle head. Witness also said he had a full eye. It is a remarkable thing that everybody speaks about his full eye, a peculiarity you observe in the Defendant. RAINES met the Defendant as the latter was driving in a trap with a servant, and thought it was someone he knew. He saluted him, and the Defendant stopped. He said, "That is Mr. TICHBORNE," and the Defendant said, "I have some recollection of you, but I cannot call you by name." Witness said his name was RAINES, and the Defendant said, "You have a nickname, 'ALONZO.'" This Witness was called "ALONZO the Brave" in the regiment. He says, "Come and see me to-morrow." It was not, "What are you going to have to drink?" or "Will you be one of my Witnesses?" It was the old, free-and-easy off-hand style. He says he is going pigeon-shooting and asks him to call to-morrow. EDWARD GRACE is the next Witness. He remembered TICHBORNE in those days, and pointed him out, and described him in every particular. He speaks of that thoughtful look of ROGER TICHBORNE, as if he were constantly thinking of something, and remembers the twitch quite well, and he describes the mode in which he walked. He never saw the Defendant till August, 1873; he looked at him for half a minute, and recognised him by the upper part of his face and the eyebrows. Mr. HAWKINS said to this Witness, "You may go." (Loud Laughter.) EDWARD GRACE, formerly a Gunner in the Royal Artillery, is the next Witness. He was a Roman Catholic soldier, and was in the habit of going to Mass with ROGER TICHBORNE. This Witness during his examination was asked whether he saw "ROGER TICHBORNE" in Court, and he said he knew nothing about the Christian name, but the Defendant was the man he had known as "TICHBORNE." This Witness was not cross-examined. CHARLES PRIMETT comes next. He describes ROGER TICHBORNE'S voice as having been a very soft one—like a female's—when he first joined the regiment, but it afterwards became more manly. He saw the Defendant at Poet's Corner, and he recognised him as ROGER TICHBORNE. He knew his voice directly he heard him speak, although it had grown deeper. This Witness is also allowed to leave without being cross-examined. THOMAS RATCLIFFE also recognised ROGER TICHBORNE in the Defendant. He knew the latter very well in the regiment: and carried such a recollection of his features that he was certain he could not be mistaken as to his identity. He saw the Defendant walking on the cliff at Brighton, and there recognised him as TICHBORNE, and when asked here whether he was certain the Defendant is the man he professed to be, he replied, "I am as sure of him as I am of the breath in my body." There was nothing material elicited in cross-examination. JOSEPH MANTON is a Witness I lay very great stress on. He is now Librarian in the Westminster Hospital. His military duties brought him into communication with TICHBORNE every day at Clonmel. He says he was between 5 feet 8 inches and 5 feet 9 inches. He describes his hair like the other Witnesses, the twitch, the walk, &c., and recognised the Defendant as the same man. He went to see him at Wellesley Villas, Croydon, but did not recognise him directly, as he was so stout. He was with him about a quarter of an hour or twenty minutes. He could see the same expression of face, the half-timid expression, which you will observe in the Defendant, as Mr. MANSFIELD described it. The Defendant read an affidavit to him, but I can see nothing more natural than that the Defendant should read an affidavit for the purpose of letting him hear his voice. The Witness recognised the voice before he began to read the affidavit, and also a very slight French accent. He did not remember any difference between his reading and his speaking, so there was nothing put on. The Defendant asks him, "Do you know me?" adding, "I don't wish you to say so unless you do," and then he says, "Sit down; probably you may know me; ask me one or two questions." The Witness asked him if he remembered being at squad drill in a field outside Cahir Barracks? He said he did, and that he had fallen from his horse, which was correct. Could he have been coached up to that? Mr. HAWKINS tackled him upon the question of "timid looks," I suppose because it was too near the description given by Mr. MANSFIELD, but the Witness mentioned that the expression was both half-timid and meaningless. In the letter of the Witness an allusion occurs which, I suppose, Mr. HAWKINS intends to say suggests to the Defendant the nature of the accident which happened to him in the field. The writer says, "I remember being very much afraid that he would be dashed to pieces." Well, I don't see how that suggests the accident which happened to ROGER TICHBORNE in the field; and even if it did, I must repudiate the suggestion that the Defendant has been coached up to everything which he knows. Then follows the old suggestion of coaching from CARTER and M'CANN, and different quarters, after which the daguerreotypes are handed up, upon which the Witness said that they were not good likenesses, but there was something about the upper part of the face which reminded him of ROGER. Then he is asked some questions with reference to the affidavit which he made, upon which the Lord Chief Justice expressed an opinion that it ought to have been drawn up by an attorney.

The LORD CHIEF JUSTICE: *I say that an affidavit should be drawn up by an attorney or an attorney's clerk. An attorney is responsible for what his clerk does, and he is responsible in this Court; but when lay practitioners totally unconnected with the profession draw up affidavits they may play all sorts of tricks and they are not responsible.* I don't say it was done in this instance.

Dr. KENEALY: I am not defending the practice. All I say is if there were an emergency it might have been done by a layman.

The LORD CHIEF JUSTICE: I should not have said anything if it had been done in an emergency, but we know that BAIGENT *went about the country getting up affidavits and getting people to swear to them.*

Dr. KENEALY: I agree with the Lord Chief Justice that these documents should have been drawn up by some person who was amenable to the jurisdiction of this Court, instead of BAIGENT; but it has been done; and yet I see nothing to show that BAIGENT coloured false evidence so as to make it appear to be true. Mr. GREENWOOD, the Regimental Tailor of the Carabineers, is the next Witness, and is of great importance. He was a Witness at the last Trial, and since that time, in common with other people, he has heard all sorts of rumours of fraud, perjury, and conspiracy, but he is not shaken. After mature self-examination he has remained true to his colours and belief. His mind has remained unchanged. Some of our Witnesses have deserted us since the last Trial—General CUSTANCE, for instance—but many have remained true to us, unaltered and undamaged by newspaper articles and conversation. Gentlemen, if any one of you will put yourselves in the position of Mr. GREENWOOD, you would not be induced to come forward to give false evidence for any consideration in the world. Mr. GREENWOOD was the regimental tailor from 1843 to 1856. He remembers TICHBORNE well; and was in the habit of supplying him with clothes from time to time until he left the regiment. When he first measured him he was 36½ inches round the chest, and the last time he measured him he was 37 inches. Mr. Justice LUSH was anxious to know the date, but his books were not then in Court. The Witness identified the Defendant as ROGER CHARLES TICHBORNE, of the Carabineers; and goes through all his features, commencing with the hair, and he says the feet must have been small from the measurement of the bottom of the trousers. He remembered the in-knee and all the characteristics of ROGER TICHBORNE. He went to Croydon, and CARTER opened the door. Witness did not know CARTER was there, but simply asked him how he was. The Defendant was not at home, and he waited. In about ten minutes Defendant drew up in a cab. Mr. HAWKINS will tell you that the Defendant had a habit, when anyone called to identify him, of keeping them waiting till CARTER or M'CANN had coached him up; but that suggestion is negatived by the facts. In this Case the Witness says the Defendant came up directly into the room, and asked him how he was. The Witness did not recognise him at the first, but saw in the Defendant the same expression of eyes that ROGER TICHBORNE had. "I told him I saw a likeness, but the nose seemed quite different. He explained to me that his nose had been altered by a fall, and that quite satisfied me." He then put some test questions—first, if he remembered a particular coat made for him, meaning a scarlet hunting-coat, with "H. H." buttons. The Defendant did not remember that, but said, "I remember you making me a blue monkey-jacket." The Witness had forgotten that; but, on referring to his books, he found that in October, 1850, he had furnished Mr. TICHBORNE with a blue pilot-coat, which the Officers used to call "monkey-jacket." He asked him whether he remembered another coat, not regimental, and he replied, "Yes; you made me a drab driving coat, and Captain HAYWARD had one of the same sort and stitched in the same way." There was a great deal of peculiar stitching on those coats. It was true that Captain HAYWARD also had one. The Witness then showed him a photograph with three figures, and he identified the middle one at once as FRASER, and the others as BETTY and DUBOBLE. This, the Jury would remember, was before the Defendant's interview with the widow of one of the Carabineers, where it was alleged he had seen a similar three-fold photograph, and made himself acquainted with it. The Witness was cross-examined by Mr. HAWKINS about the resemblance, but though the cross-examination was long, I see nothing to weaken his testimony. He is asked whether he took his ledger to HOLMES, but he says he did not. I don't know how they manage this fellow HOLMES. They get a great deal of information from him, and use it against the Defendant, and then they suggest that HOLMES is a very bad fellow. GREENWOOD says he did not tell HOLMES anything about it. Passing again to the Witness, I find he is asked about the measure of the Defendant. His examination is continued on the next day, and he says the measure given was the same as that of ROGER TICHBORNE'S trousers. JAMES HODGSON, who was formerly in the Dragoons, comes next. He remembers young TICHBORNE, and says he rode with him across

the Phœnix Park to a review on one occasion. He identifies the Defendant as ROGER TICHBORNE, but he was not cross-examined to any purpose. JAMES MARTIN, a professional pedestrian, residing in Canterbury in 1853, when ROGER TICHBORNE was in that city, is the next Witness. He speaks to a running match having taken place at which ROGER was present, and at which this young Officer took a fancy to a pair of shoes he was wearing, and received them as a present, giving him (Witness) half a sovereign in return. This man identifies the Defendant as ROGER, and speaks to the twitching of the eyebrows. He says the first time he saw the Defendant he was doubtful of him, but afterwards he identified him by the voice and general appearance. SARAH ELLA comes next. She identifies the Defendant as TICHBORNE, and remembers his hair, his hand, and his voice. She was cross-examined by Mr. Serjeant PARRY, but he got nothing out of her of advantage to his Cause. Mr. GODSMARK, a fly-driver at Canterbury, speaks to the Defendant being ROGER TICHBORNE. He met him first when the officers were obtaining fresh horses. He has a distinct recollection of ROGER, and recognises the Defendant as him. Here came another of those suggestions of which I complain. Serjeant PARRY asked the Witness, "Did Mr. ONSLOW go in to see the Defendant while you were waiting?" —referring to the occasion on which the Witness visited the Defendant. Witness replied in the negative. As if any one could suppose Mr. ONSLOW guilty of such an act as is here insinuated. I have been asking myself what Mr. ONSLOW and all the rest of us are to get out of this? I suppose if the estates are ultimately recovered, Mr. GUILDFORD ONSLOW will get Guildford-street, Mr. WHALLEY part of the Doughty estates, Lord RIVERS, who has been in the Guards, will receive Aldershot, and for my own part I shall expect to get Tichborne Park, where I hope to pass my old age in the philosophical amusement of catching minnows with my left hand. (Laughter.)

The LORD CHIEF JUSTICE: With occasional retreats to the grotto? (Renewed laughter.)

Dr. KENEALY: But then there is young BOGLE to be provided for, and as for him, I think, as peerages are so much in fashion nowadays, he should be made a peer, and in order that it might be a standing memorial and rebuke against all forgers, I think his title might appropriately be that of "Lord PITTENDREIGH;" it would be an appropriate and historical title. Mr. ONSLOW did not have any conversation with the Defendant on the occasion referred to, for it appears he was standing outside. Serjeant PARRY then put into his hand the famous photograph, No. 122 or 123; but the Witness simply said "They have not flattered him very much here," and could find little resemblance in it to ROGER TICHBORNE. JUDITH WOODMAN, the gatekeeper's daughter at Glengall Park, says she remembers ROGER, who used to come and talk to her father. She relates an incident which took place under her own observation, and which shows the fits of passion ROGER was in the habit of giving way to occasionally. She says a Mr. PINKNEY had put his foot upon ROGER'S knee, which indignity he resented by flying into a terrible passion, and making a violent attack upon the man; and if he would do that in the open air and in the middle of the day, Gentlemen, I must ask you to believe him a person quite capable of drawing a sword. On another occasion, ROGER, directly he conceived himself insulted the Witness says, got up, rushed at PINKNEY, took him by the throat, and shook him. PINKNEY called out to her, as she went towards them to separate them, "Keep away, JUDY; he will stab you, for he is a Frenchman." Well, she identifies the Defendant as ROGER TICHBORNE. It transpired that this Witness was subpœnaed by Mr. BOWKER. She came to the Court, and saw the Defendant leaving it. Her sister was with her at the time, and she turned round to her and said, "Surely that must be Mr. TICHBORNE." No evidence I submit to you could be stronger than this. Here is a Witness who came up to see the Defendant after a conversation with Mr. BOWKER, so that the probability is that her mind was, perhaps unconsciously, biassed in favour of the Prosecution, but directly she sees the Defendant she is sure of his identity. What stronger personal recognition could you have? The Witness had some conversation with the Defendant subsequently, and she says he did not know her at first, but ultimately recognised her, and asked after her sister. In cross-examination she said she recollected ROGER perfectly well. He had a miserable and unhappy look which seemed always in her memory. There are faces, I submit, Gentlemen, which, having once seen, we never can forget, in consequence of some strange or wild or melancholy expression on them; and this seems to have been the effect produced on Mrs. WOODMAN by ROGER TICHBORNE'S features. Then comes the old device of the photographs, to which I am really tired of alluding. She examines them, but says she sees in them only a very faint resemblance to ROGER TICHBORNE. HELEN PEARCE is the sister of Mrs. WOODMAN, and probably the one the Defendant asked after. She speaks to the quarrel ROGER had with Mrs. PINKNEY, and gives similar evidence with reference to her connection with Mr. BOWKER to that given by her sister. The photographs—Nos. 122 and 123—are handed to her in cross-examination, but she says they do not remind her very much of ROGER TICHBORNE. The eyes and forehead of the Defendant, she states, are exactly like those of ROGER TICHBORNE. DANIEL COLLINS, an ex-policeman, is the next person, but he really proved nothing. ELIZABETH INGLIS, the wife of a Carabineer, remembers ROGER TICHBORNE at Dublin, Cahir, and Canterbury. She speaks to his features and characteristics, and identifies the Defendant as he. She saw the Defendant at the Waterloo Hotel, and questioned him as to certain events which took place at Cahir—his horse running away with him, for instance. He answered her satisfactorily, and she had no difficulty in identifying him. The features she remembered principally were the eyes, the eyebrows, and the hair, and another guiding point of resemblance was the peculiar walk. This Witness was dismissed without being cross-examined. JOB GILLINGS is the next. He used to be in the same Troop as the Defendant, and used to drill with him, so that he had many opportunities of seeing him. He identified the Defendant as TICHBORNE, stating that the features he knew him by were those from the nose upwards. ALEXANDER BOX, who was also in the same Troop as ROGER TICHBORNE, and in drill with him, gave similar evidence to the last Witness. He added that Colonel HAY used to put ROGER TICHBORNE in the ranks, and if this was so, which we have no reason to doubt, no wonder that he had a melancholy expression on his face. His life amongst those Carabineers must have been a species of hell upon earth.

[The Court then adjourned for luncheon.]

On its re-assembling,

Dr. KENEALY continued: CHARLES BUTLER is the next. He remembers TICHBORNE in the Carabineers, describes him, and says this is he. WILLIAM SPARKS is next. He saw a great deal of TICHBORNE, and recognises him by his walk and features. WILLIAM ROBINSON follows. He is one of those who spoke of ROGER TICHBORNE going about with the men instead of his brother officers. He describes the man and says this is he. The Defendant recognised him, and called him by name when he saw him. He is cross-examined at great length as to what he had said at the last Trial, but you must not put implicit faith in the printed report of that Trial. You have yourselves seen several mistakes made in the present Case—indeed, it is inevitable that there should be a number of mistakes in a report prepared and printed from day to day. EDWIN EELS, another Carabineer, speaks, amongst other things, to Captain MORTON'S having had the hollow-backed horse at Portobello, and, as Captain SANKEY gives similar evidence, I submit Captain MORTON must be mistaken. The Witness first saw the Defendant at Hull, and recognised him the moment he stepped on the platform. He speaks to the features, and to seeing the same sorrowful expression he used to notice at Canterbury. Photograph No. 122 is, of course, shown to him, and he says he does not recognise it. The name of a Mr. HINGSTON, a Town Councillor of Hull, is brought in, but he does not seem to be associated with the band of conspirators. I don't know whether it has been decided what part of the Tichborne Estates Mr. HINGSTON is to get. As to the Defendant himself, of course we shall only allow him two or three thousand a year, to enable him to get strong Irish whisky and eighteen or twenty cigars a day. (A laugh.) That is all he deserves, and all we intend to give him. MARGARET HORNIBROOK, whose husband was in the Carabineers, remembers TICHBORNE, mentions one of those outbursts of passion he was given to, and recognises him particularly by his voice. ANN ADAMS the wife of a former private in the Carabineers, remembers young TICHBORNE joining very well. She went with Mrs. HORNIBROOK to see the Defendant at Newcastle, and recognised him at once. THOMAS DORNEY, Chief Clerk of Police for Tipperary, and formerly hair-dresser at Clonmel, used to cut the hair of the Carabineers at Cahir and Clonmel. He remembers cutting ROGER TICHBORNE'S hair, but cannot say whether he had a scar on the back of the head. He remembers, however, that one of the officers had such a scar, and adds that he has examined the head of the Defendant, and found a scar that corresponds to the one referred to. The next Witness is HENRY WILLIAMS, who was a Non-Commissioned Officer in the Carabineers all the time TICHBORNE was in the regiment. He describes the appearance of TICHBORNE, and details some questions to which the Defendant gave satisfactory answers. He identifies him by these answers, and by the appearance about the eyebrows. There were indications of real memory in his calling Major FRASER "Quartermaster FRASER," that is by the office which he held at that time instead of major; and in the same way he spoke of Captain BICKERSTAFFE as "Adjutant."

The FOREMAN: He ought to have called him by his rank as captain.

Dr. KENEALY: I think not. The Defendant told the Witness that on one occasion certain men were punished by himself for being drunk, and his account of their behaviour was correct, including the statement that one of them put himself in "a fighting attitude." He also told the names of the men. "I kept my eye on the Defendant," said the Witness, "all the time I was with him." These old soldiers were not to be done, "and I saw the likeness in his eyebrows and forehead."

Mr. TAYLOR (Juror): He said that if the Defendant had not answered his question he should have given him up.

Dr. KENEALY: HUGH HUGHES comes next. He also identifies the Defendant by his features and walk. JOHN HASTIE comes next. He remembers TICHBORNE, and gives a full and ample description of him, in the course of which he speaks of his having ears with the lobes detached from the cheek.

Mr. TAYLOR (Juror): He finishes by stating that he cannot say the Defendant is the same Mr. TICHBORNE.

The LORD CHIEF JUSTICE: What is the Witness?

Dr. KENEALY: A private soldier.

The LORD CHIEF JUSTICE: *If a man told me that he could remember such a thing for 20 years I should shake my head.* He might recollect the face.

Dr. KENEALY: Yet the specimens of private soldiers whom we have seen here prove that we should treat their testimony with respect.

The LORD CHIEF JUSTICE: It is difficult to understand how any one, unless he were so intimate as to be in daily communication with you, could speak to your ears after so long an interval.

Dr. KENEALY: He seems to have been an observant man, for he notices that there was a peculiar expression in his eyes. MARY ANN PLYMOTT is the next Witness. She remembers TICHBORNE at Dublin and Cahir, and recognises him by his walk and general appearance. With the exception of two other Witnesses, whom I will afterwards refer to, that is all the evidence given under the Carabineer head. I now wish to call your attention to the testimony of AGNES MICHAEL. She remembers TICHBORNE at Cahir, and used to go to the same chapel with him. She last saw him there in 1850, and she also saw him in Sydney in 1866. There were reports about at the time of an English baronet wanting to set up as an hotel-keeper, and, being in the neighbourhood of FORD'S Hotel, Witness saw the Defendant, and thought he was Mr. TICHBORNE. She recognised him by the general expression of his countenance. Some time during the present year she saw him drive past her door in Newport, and recognised him as the same man she had seen at Cahir and at Sydney. ELIZABETH HISCOCK again gives important evidence. She is the wife of GEORGE HISCOCK, of Birmingham, and went to Australia in March, 1851. She and her husband seem to have been industrious and enterprising people, and were in the habit of travelling from Melbourne to Bendigo. She says that while they were camped out once in the latter part of 1858, two men—the Defendant being one of them—came up, and got some tea from them. In the course of the evening some person addressed Witness by name, and the Defendant asked her if her husband had kept a shoe shop at 70, Haymarket, and, on her replying that he had, said something which I think is of great importance.

The LORD CHIEF JUSTICE: Did you not comment on that in the Australian part of the Case?

Dr. KENEALY: No, my lord.

The LORD CHIEF JUSTICE: *I think you did.*

Dr. KENEALY: No, this is the first time I have mentioned it.

The LORD CHIEF JUSTICE: It belongs to the Australian part of the Case, and when time becomes so short, and we find you returning to that and reading the evidence in detail, *it is necessary to ask what you propose to do?*

Dr. KENEALY: I will be as brief as I can, but I hope you are not going to tie me down to any particular time.

The LORD CHIEF JUSTICE: I beg your pardon. *We gave you fair warning, and now you are talking about this woman as if you meant to fill up the day with her.* [It was now about three o'clock.]

Dr. KENEALY: I hope your lordship will give me credit for trying to compress my remarks. I have not wasted a single moment.

The LORD CHIEF JUSTICE: *You are going at length into statements of this Witness, whose evidence might be condensed into five minutes.* She says two men came up and got some food from them, and one of the men was the Defendant.

Dr. KENEALY: I think she says more, for she identifies him as a man who had passed under the name of ROGER.

The LORD CHIEF JUSTICE: She says he referred to her husband, whom you have not called, and said he would know him if she gave the name of ROGER.

Dr. KENEALY: If your lordship sums it up in that way I shall not proceed with her; but I did not intend to go all through the evidence. I now call your attention, Gentlemen, to Witnesses who are not Carabineers, but whose evidence has been classed with theirs. The first of these is Mr. BIDDULPH.

The LORD CHIEF JUSTICE: Did you not deal with him as one of the Family Witnesses?

Dr. KENEALY: No; I have alluded to him, but I have not gone through his evidence.

The LORD CHIEF JUSTICE: You referred to him, and used what I thought a very good argument in regard to him. There was a good deal about a pipe.

Dr. KENEALY: In that case, I will leave him and come to Mr. BULPITT. I will have to refer to him again in connection with GOSFORD and the sealed packet, and now merely allude to his evidence as to identity. Mr. BULPITT remembers ROGER CHARLES TICHBORNE and identifies this man as him. There is a very long cross-examination of Mr. BULPITT in reference to his putting £500 to his credit, but nothing is elicited that practically affects the Case. I come next to Captain CUNLIFFE. He was not examined at the former Trial. He became acquainted with TICHBORNE at Cahir, and gives us an idea of the poor fellow's dulness. They were brought together by their liking for French literature. He describes his appearance in detail, and says the Defendant is very like him, and he thinks he is the man. He tells Serjeant PARRY he would not pledge his oath as to the identity, but adds again that he thinks he is the man. He is one of the Witnesses who speak to ROGER drinking a good deal, and steeping his brain, which is one of the worst kinds of drinking.

The LORD CHIEF JUSTICE: I asked him, I think, as to whether there was any effect next day.

Dr. KENEALY: Yes; and he says he was quite himself in the morning. Lieut.-Colonel NORBURY is the next. He was a Captain in the Carabineers, and joined them the same year as ROGER. He was at Portobello and Cahir, and says he has a distinct recollection of him. Being asked if he recognised the Defendant, Lieut.-Colonel NORBURY was in doubt as to what he should found his opinion on, and at length says, "From the facts within my own knowledge I believe him to be ROGER TICHBORNE." Now, Gentlemen, if the Defendant had been an impostor, do you think he would have dared to call on men like Colonel NORBURY? For my part, I think he would have confined himself to getting hold of illiterate men of his own class; and I look upon it as a strong proof of his identity that, when he had been in England only a few weeks, the Defendant went straight into the presence of Mr. HOPKINS, and afterwards called on such men as Lieut.-Colonel NORBURY. The Witness said he mentioned four persons who were all dead, and whom he could hardly know anything about unless he were ROGER, and I submit the answers are such as could only be given by the real man. Asked what it was that he used to wear round his neck, he said, "Do you mean that old comforter you used to laugh at me for?" The Witness says that TICHBORNE really did wear such a thing, and was laughed at for it; but he told the Defendant that was not what he was alluding to, and then came the right answer, "I suppose you mean my sacred heart." Asked what he gave them to drink when his brother Officers visited him at his rooms, the Defendant answered "punch," and at the request of the Witness described how it was made—his description being quite accurate. This is evidence which I submit it is utterly impossible to get over. Colonel NORBURY was quite convinced by what passed during the interview that the Defendant was really ROGER TICHBORNE, and invited him to his house, which, of course, he would not have done if he had had the least suspicion that he was an impostor. The Prosecution may shout "ORTON, ORTON, ORTON!" but they cannot get over evidence of this kind. In cross-examination of the Witness, it is got out of him that the examination and cross-examination of the Defendant in the Common Pleas has raised a doubt in his mind; and I am sure I am not astonished at that, because everybody must have been prejudiced to some extent against him by the stupid answers he gave. You will remember, however, that nothing that passed while he was with the Defendant caused him to doubt his identity, and that even now when he comes into his presence he believes he must be the real man. Probably he may have some doubt when he goes into society and hears talk of his being ORTON, and some young lady says to him, 'Surely you can't think he is the real man?" but that is all. I am sorry for the honour and glory of my learned friend that he did not get more out of Colonel NORBURY. A number of questions that were put to him the Defendant could not answer, but the Witness's faith did not seem to be shaken, and the rest of the cross-examination is of no consequence.

Mr. TAYLOR (Juror): *Don't read it then, pray.* (A laugh.)

Dr. KENEALY: I will not.

Mr. TAYLOR (Juror): *You have twenty minutes to spin out yet.* (Laughter.)

Dr. KENEALY: The next Witness is Captain SANKEY, a Captain in the Royal Navy, who remembers ROGER TICHBORNE'S coming to his house at Clonmel. This Witness was taken into a room by Mr. SPOFFORTH, the Defendant was there introduced to him, and it struck him at once that he was Mr. TICHBORNE of the Carabineers. At first the Defendant addressed him as Captain KELLETT, and on being told that he was not, he said, "Oh, you are Captain SANKEY." Captain SANKEY recognised in one word a French accent. The Defendant drew before him a sketch of a horse, which someone used to ride, and he was struck by his speaking of his two sisters. He also mentioned the melancholy cast of countenance.

The LORD CHIEF JUSTICE: That was only in ROGER TICHBORNE.

Dr. KENEALY: The Defendant dined at the Witness's house, and the Witness did not find him the vulgar fellow he had been described to be. I now come to my last Witness on this matter—Lady BURRARD. She was never in ROGER'S company more than once. She said his face was like a cross in an oval. Look at that face, Gentlemen (pointing to the Defendant's), and you will see the cross in the oval as plainly as possible. That is all I have to say about that evidence. I don't know whether your lordship would ask me to go on for four minutes (it wanting only that time to 4 o'clock)?

The LORD CHIEF JUSTICE: Then that concludes your TICHBORNE Witnesses?

Dr. KENEALY: Yes.

The LORD CHIEF JUSTICE: And to-morrow you will deal with Lady RADCLIFFE?

Dr. KENEALY: Yes.

The LORD CHIEF JUSTICE: Will you conclude it to-morrow?

Dr. KENEALY: I will do what I can to finish it to-morrow; but I think it will take me till mid-day on Wednesday.

The LORD CHIEF JUSTICE: *Oh, no; you will finish to-morrow.*

Dr. KENEALY: I will try and finish the evidence to-morrow, but I suppose that if I should want to go on till mid-day on Wednesday you will not stop me?

THE LORD CHIEF JUSTICE: The Sealed Packet head, or the whole Case?

Dr. KENEALY: The Sealed Packet.

Mr. Justice LUSH: That is the whole Case.

Dr. KENEALY: Yes; but your lordships will not prevent me adding a few winding-up observations?

Mr. TAYLOR (Juror): *You can easily finish to-morrow.*

Dr. KENEALY: I beg your pardon.

THE LORD CHIEF JUSTICE: I think you might finish the third issue to-morrow, but of course we would not be inclined to object to your giving a short summary of your Case as the winding-up.

Dr. KENEALY: I am obliged to your lordship, and will do what I can to finish the third issue to-morrow.

[The Court adjourned at four o'clock.]

ONE HUNDRED AND FIFTY-SEVENTH DAY.—JANUARY 13TH, 1874.

Dr. KENEALY resumed his address to the Jury. He said: May it please your lordship, Gentlemen of the Jury—In approaching the third and final and most painful part of the duties which have been imposed upon me—namely, that matter as to Miss DOUGHTY—I feel that I have need of all your indulgence. I felt myself on safe, and certain, and uninvidious ground when I was dealing simply with the ORTON and TICHBORNE portions of the Case. I never entertained a shadow of a doubt that I should be able altogether to displace and disprove the ORTON theory. I never doubted that I should be able to bring evidence before you that would scatter it to the winds and blow it to destruction. I was as sure as I could be of anything that, whoever the Defendant may turn out in your opinion to be, I could demonstrate to you that he was not ARTHUR ORTON. In the same way, Gentlemen, when I was upon the TICHBORNE part of my Case, I felt that I was upon a rock. Without being blind to the evidence that has been produced on the part of the Prosecution—unless I delude my own mind—the evidence I have offered in reply has triumphantly overcome it. But, Gentlemen, upon this matter, which has excited a great deal of ill-feeling amongst a vast number of people against the Defendant, I feel that my difficulties are great. There are only two persons in the world who can absolutely know whether there was any such relation as that alleged between Miss DOUGHTY and the Defendant—two only to whom the secret can be known. The Defendant is a man who may deserve some sympathy for his faults and absurdities, but he has placed himself, or has been forced to place himself, in the most invidious position by having revealed that matter, if it be true. The lady, on the other hand, is a person who deserves sympathy, and certainly must receive sympathy from all well-minded people. I sympathise with her myself, but any sympathy I may feel cannot and ought not to interfere with the due discharge of my most unpleasant task. Gentlemen, in examining a matter of this kind our prejudice is apt to be excited and our reason to be stifled. As a rule, in such a case the feeling is all on the side of the woman and against the man. Therefore I feel that I have astounding difficulties to contend with, and that I can only rely upon your common sense and that strong feeling of justice which I believe characterises all English Jurymen, for the purpose of carrying me safely through this ordeal. One's feelings are so excited in respect of a matter of this description, that the mind is in an unfavourable condition for an impartial consideration of the Case. Nevertheless, there are two sides of the picture. You have before you Lady RADCLIFFE and this Defendant. There is Lady RADCLIFFE'S fair fame, and there is the Defendant's future life. Lady RADCLIFFE has children, with whom we all sympathise. So has the Defendant. They are, therefore, in an equal position. In some respects I must repeat what I have said on a former occasion, that this third episode is irrelevant to the true issue you have to try. The real and true issue is this—Is he ORTON? Is he TICHBORNE? I complain of its introduction on this ground particularly; that, if he be ORTON, it is impossible the seduction could have taken place. It has always seemed to me that the introduction of this charge rather demonstrates weakness on the part of the Prosecution than anything else. If the Prosecution was perfectly convinced that this man is ORTON, it must have followed that the allegation he made was false. The two things are inconsistent—as wholly antagonistic as day and night. Those who instituted the proceedings must have had the most serious and grave doubts that they could ever have established the ORTON theory, or else they never would have resorted to the introduction of a topic calculated to create prejudice and dissipate your capacity for cool and calm deliberation.

THE LORD CHIEF JUSTICE: They could not possibly have done that. It is the crucial test of the Case, and has been treated so at the former Trial and throughout the whole proceedings. In my opinion the Prosecution would have been wanting in duty to the Case, and, above all, wanting in common justice, if they had done what you say.

Dr. KENEALY: My lord, if the Defendant is ORTON he could not have done what is attributed to him in regard to Lady RADCLIFFE.

THE LORD CHIEF JUSTICE: Of course not. But the question whether he is ORTON is one thing and whether he is ROGER TICHBORNE is another, and a much more important one. As to the latter, the issue respecting the sealed packet is very important—it is crucial, for if the statement of the Prosecution is true the Defendant cannot be ROGER TICHBORNE.

Dr. KENEALY: With reference to the TICHBORNE Case, no doubt it is important; with reference to the ORTON Case it is unimportant. If he be ORTON, it is impossible it can be true.

THE LORD CHIEF JUSTICE: There I quite agree with you.

Dr. KENEALY: I am glad to hear your lordship say so. I cannot, Gentlemen, but still think it would have been better to have left the Case clear of this branch of it, particularly after the statement of Lord Chief Justice BOVILL that there was no pretence for saying that the charge was true. So far as the statement of a judge could exonerate Lady RADCLIFFE, she was exonerated, and there the matter ought to have rested. Gentlemen, I am glad to have the sanction of my lord's judgment that if the Defendant be ORTON the seduction was impossible. I hope I shall have your judgment when I say that the introduction of this charge weakens the ORTON theory. Gentlemen, these two persons are fighting for the strongest possible motives. Lady RADCLIFFE is fighting for fame—and more. If she can establish by any means that this man is not TICHBORNE there is only one young life between her and £25,000 a year. If he is TICHBORNE, there are many lives—his own, his children's, and finally the life of his brother's son. If she, or her friends or advisers, can by creating prejudice sway your judgments and influence your feelings against him, then there is but one very young life between her and the acquisition of this enormous fortune. That is a terrible temptation. There is first fame, next a valuable estate, and next she may be gratifying a feeling of vengeance. We know that women have frequently murdered their seducers. Is she a willing agent in this matter, or does she come forward under a feeling of terrible constraint? She must be anxious to set herself right before her husband and the world. Gentlemen, persons in Lady RADCLIFFE'S position, or even higher, have often done most extraordinary things based upon the old Jesuitical maxim that the end justifies the means. For my own part, I do not feel in the least indignant with Lady RADCLIFFE for having the strongest possible feelings of hatred of this man. She would not be woman if she had not. Assuming him to be ORTON, she must detest him. Assuming him to be TICHBORNE, she must loathe and despise him; and these are not the best feelings under the influence of which a Witness can give evidence. If the Defendant had been acquitted by you there would be no law to prevent Lady RADCLIFFE'S husband from prosecuting this man for his falsehood. He might have said with great truth—and how grandly it would have sounded in an English Court of Justice—"We did not wish to prejudice the Case by the introduction of this charge—we were resolved not to resort to any undue means of procuring your conviction—we did that which will shine in history—we allowed your Case to be tried solely and absolutely on the merits. But now that you are established to be TICHBORNE, justice requires that we should prosecute you on this charge." Is there a man amongst you who would not say that that would be the fairest and most honourable course to have adopted? But that has not been done; and therefore I must fight the Defendant's Cause; hoping that what I have said will produce some effect upon your minds.

Gentlemen, with one observation I must preface my remarks on this subject. I do so, not with any religious prejudice against the Jesuits, because I do not regard them as a religious but a secular and political society, who use divinity only as a means to an end. This Defendant was brought up wholly under Jesuit auspices. He was cradled among them as it were; in Paris and in England he was perpetually surrounded by them. You have seen some of the fruits of their training at Stonyhurst. I need only mention BELLEW. What I contend for is, that such persons do not educate youth in that reverence for female virtue which other Orders of the Church of Rome inculcate. This is not my view solely; I would rather that you took it on the authority of the Rev. CHARLES KINGSLEY, who in his novel of "Westward Ho!" thus declares his opinion.

He is speaking of EUSTACE LEIGH and of his passion for the Rose of Torridge. Thus he continues: "He had seen her in the town, and, for the first time in his life, fallen utterly in love. And now that she had come down close to his father's house, he looked on her as a Lamb fallen unawares into the jaws of the greedy Wolf, which he felt himself to be. For EUSTACE'S love had little or nothing of chivalry, self-sacrifice, or purity in it.

Those were virtues which were not taught at Rome. Careful as the Jesuits were over the practical morality of their pupils, this severe restraint had little effect in producing real habits of self-control. What little EUSTACE had learned of women from them, was as base and vulgar as the rest of their teaching. What could it be else, if instilled by men educated in the schools of Italy and France, in the church which produced the foul novels of 'Cynthio' and 'Bandello,' and compelled RABELAIS, in order to escape the rack and stake, to hide the light of his great wisdom, not beneath a bushel, but beneath a dunghill? the age in which the Romish Church had made marriage a legalized tyranny, and the laity by a natural and pardonable revulsion had exalted Adultery into a virtue and a science. That all love was lust—that all women had their price—that profligacy, though an ecclesiastical sin, was so pardonable, if not necessary, as to be hardly a moral sin, were notions which EUSTACE must needs have gathered from the hints of his preceptors, for their written works bear to this day fullest and foulest testimony that such was their opinion, and that their conception of the relation of the sexes was really not a whit higher than that of the profligate laity who confessed to them." If these, Gentlemen, were the notions which TICHBORNE imbibed from his teachers, he was well prepared for what took place.

Gentlemen, the feeling of vindictiveness which may operate even in the case of the nearest relation is most curiously illustrated in our own country in the life of that lady to whom I formerly referred you, namely, the Countess of MACCLESFIELD, with reference to her own son. Before he was born she denounced him to the world as the offspring of adultery. He was cast upon the earth, as it were, a miserable, degraded wretch by his own mother. So great was the hatred of that lady for her son that his reputed father, Earl RIVERS, who had provided a large sum of money for his support, was absolutely deceived, by the Countess of MACCLESFIELD, when lying on his death bed, by the assurance that his son was dead. And when afterwards RICHARD SAVAGE was tried by Judge PAGE—one of the foulest names in English judicial history—for having killed a man in a hasty rencontre at Charing-cross, and he was condemned to death, his own mother actually interfered to prevent a reprieve or pardon being given, so violent was her hatred of her own son. Well, Gentlemen, if those things have happened, let us bear them in mind when we come to consider what may possibly be some of the mixed and ruling motives operating in the mind of Lady RADCLIFFE. That all the Family must have likewise the most intense hatred of this man I need hardly put before you. The scorn that he showed them by abandoning them they are probably now repaying by similar scorn; and Lady RADCLIFFE, moving among those relations, must hear nothing day after day but the most violent ill-will expressed towards this Defendant—an ill-will which, even if she herself had no feelings in the matter, is calculated to colour her mind to the most intense degree: as it has, doubtless coloured the mind of Miss HALES * and others of her sex. Lady RADCLIFFE, therefore, appears to prosecute this portion of the accusation under the most unfavourable influence that can operate upon the human mind; and it is necessary for me to bring before you these circumstances, because, as I say, there are only two persons in the world to whom it is absolutely known whether this is true or false—and she is one of those two. And if, therefore, she comes to swear herself right—to ask you to say that she is a chaste woman, and to save her character—she comes with motives the most powerful. She comes with the idea of conciliating a great family alliance, and putting herself right in her husband's eyes. Every sentiment, therefore, that ever animated the human heart combines to force Lady RADCLIFFE to the front in this Case, and, having gone to the front, to fight her battle to the last. We know the extraordinary power of will which women possess—their extraordinary tenacity when once they have worked themselves up to a certain resolution. But, Gentlemen, whatever feeling I myself may have as to the preponderance of evidence upon this matter, I repeat to you, as I said before, that I have no wish in my heart that you should convict Lady RADCLIFFE of falsehood upon this matter. I desire to win no victory over that lady. I ask you now, as I asked you before, to come to no conclusion upon this issue. Let her friends for all time say—if they like—that there was one obstinate man on the Jury against eleven who were convinced of her innocence. I am sure I shall not be sorry. I do not care what is said so long as you do not convict Lady RADCLIFFE. Gentlemen, we are here for justice, we are not here for pity. If smiles, or tears, or fascinations can once win a Jury from what is right, there is an end to all justice; and if our own feelings of indignation at a man's folly interfere with our sense of right and wrong, there is also an end of justice. You have only one thing to consider in this issue, and that is justice. Gentlemen, we must lull all passion and all sympathy to rest. I could, if I thought fit—but I have never done so from the beginning of this Trial—lay before you a very strong claim for sympathy on the part of the Defendant. I do not mean sympathy on that particular issue, but sympathy upon the whole of his life. But I do not think I have made one single appeal to you for sympathy, and I will not do so. All that I have said to you, and all that I mean to say to you to the end, will be based simply upon your love of justice and honesty. I won't ask you to deviate in the least degree from your sense of Right and Fair-play, by asking you to take into account the extraordinary vicissitudes of his life, the extraordinary way in which he was brought up, the strong temptations by which he has been assailed, and his great crowning misfortune, namely, that he never had strength of mind enough to resist those temptations. When you think of Lady RADCLIFFE, and think of her as deserving of sympathy, bear in mind, I pray you, that there was another lady—perfectly innocent, perfectly harmless, who had done nothing beyond saying her own son was her son—who, I say, was persecuted to the death by her family. Never, probably, did any of us hear of a greater desecration or a greater scandal than that of carrying MARY ANN LODER and those other Wapping people to the grave of that unhappy lady. Again, if there is to be anything like sympathy, though I say there ought not to be, think, I ask you, of the seven years' persecution which this man has gone through. They had got, as I say, his money and his estates, because I contend that I have proved him to be TICHBORNE. I reserved this part of the Case until I had done that, because till I had established that he was ROGER TICHBORNE it would be idle to remark upon it. So long as there was any doubt about whether he was ORTON it would have been a waste of time; but having shown conclusively that he is not ORTON, and that he is TICHBORNE, it is incumbent upon me now to meet this charge. Before I grapple with the evidence in this part of the Case, allow me to summon before you the appearance and figure of Lady RADCLIFFE. Allow me to call attention to the astounding personal resemblance which Lady RADCLIFFE bears to this man. There was the hair of the same colour exactly; there was the face shaped as if in the same mould; there was the forehead rounded exactly in the same way; there was the twitch of the eyebrows, which is probably the most striking and remarkable feature in both; there was, at times, the same overcast look which this Defendant has; there was the same roll of the eye which this Defendant possesses, and which so many persons have sworn that ROGER TICHBORNE had; there was the same pensive expression at times flitting across that lady's face; there was the large and pendulous ear, as if made from the same model; there was occasionally in her the same hoarseness of voice which you have heard in this man when he has now and again addressed the Court; and, finally, Lady RADCLIFFE'S nose and chin presented the most remarkable similarity to those of this Defendant. It gave me great satisfaction to see Lady RADCLIFFE recalled into the Witness-box, because it gave you the opportunity of observing for yourselves whether this resemblance of which I spoke in my opening address really existed or not, and so judging for yourselves. Again, you will remember that at that time she assumed a tone of levity, and indulged in an affected laugh, such as is occasionally resorted to by persons who

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MISS HALES.

* "'AN HEIRESS TAKING THE VEIL.—Miss HALES, the owner of the Hales Estate, Canterbury, took the veil as a novice of the order of Carmelite Nuns, a short time since. The ceremony was performed in the chapel of the Carmelite Convent in Paris. Miss HALES was dressed in white, and wore orange blossoms in her hair. The Archbishop of PARIS officiated, assisted by many other dignitaries of the church. Miss HALES, who has by this shut herself out from the world, at the age of twenty-two, took the vow of Poverty, Obedience, and Chastity, with the utmost willingness; all the persuasions of her friends to alter her determination being utterly fruitless. A great many of her friends were present at the ceremony, her mother amongst them. Miss HALES intends making over the whole of her estates, roughly valued at £150,000, to the Church of Rome; only excepting a small annuity in favour of her mother.'"

"Let our readers pause and dwell on this fact for a moment—a fact at which greedy monks must chuckle. By securing such heiresses as this, she adds immensely to all her elements of power. A capital of £150,000 at 5 per cent. is £7,500 a year. *This will support in perpetuity seventy-five priests in Britain, at £100 a-year each*, or twice that number of schoolmasters, at £50 a-year each. If this large accession is turned in another direction, *it will enable her extensively to* BRIBE THE PRESS, *or to* PUBLISH JESUITICAL WORKS—it will give her the means of purchasing wide domains for the establishment of additional monasteries and nunneries, and the Privy Council will, under the present system, give thousands a year to endow them. It is worse than childish in these circumstances, to profess to ignore or despise the progress of Rome, or to set over against it any number of conversions, real or supposed, of poor men in Ireland, however important and gratifying, in a spiritual point of view, these may be. Rome is a political system. She is aiming *by all sorts of pious* SWINDLING at territorial supremacy in Britain, and in spite of Protestant incredulity she is making rapid strides towards the accomplishment of her ultimate object. If that object is ever secured, she will make very short work of all our churches, missions, and missionary societies, of our Bible and Bible agencies, our free Parliaments, our unfettered press. Her one object is ever the same, and *she uses the liberty of Britain* ONLY *for the purpose of betraying and destroying it.* A suggestion has been made that, besides treating such a case as the one stated above as an instance of ordinary LUNACY, the law should direct that *all such bequests should be void*, and that *the money should, in every such case, pass on to the next heir.*"—'The Orange and Protestant Banner,' 1856,—7, 8, 9, pp. 929—930.

are conscious that they are fighting a bad cause. It is an old Jesuit and diplomatic art to stave off inconvenient questions with a pretended laugh and gaiety of manner. After he came to England ROGER TICHBORNE associated much with this young lady, and there can be no doubt that it would have been a most satisfactory arrangement if the two estates could have been united. I have not had time to look into the matter, but I will assume for the sake of argument that Sir EDWARD DOUGHTY had the power of disposing of his estate at his will, but that he had taken the high and noble ground of resolving that he would let the property still go to the male line.

Mr. CHAPMAN BARBER: Allow me to explain that Sir EDWARD never had such a power.

The LORD CHIEF JUSTICE: An understanding was come to between the two brothers whereby the estate was charged £32,000, instead of £8,000 for Miss DOUGHTY.

Dr. KENEALY: It is clear that everything tended to make an alliance between the two Cousins the most desirable thing imaginable. The large sum of money which had been allowed to remain as a charge upon the estate would have been vested in the son and daughter of the respective brothers. Therefore we may fairly conclude that one of the treasured objects of all the parties interested was that there should be such an alliance. We are told by Mr. GOSFORD that the father of ROGER TICHBORNE had some dislike to the scheme, but I have failed to discover any evidence of such a feeling.

The LORD CHIEF JUSTICE: The correspondence shows that he knew nothing about it. GOSFORD says that he inferred Sir JAMES'S feelings from the dislike which he expressed to an alliance with Miss ARUNDEL. He therefore supposed that Sir JAMES did not approve of the marriage of cousins.

Dr. KENEALY: At all events I cannot conceive why he should be represented as having any insuperable objection to the match. Whatever the life of ROGER TICHBORNE may have been —and we know pretty well what it was—his letters show no folly—just as those of the Defendant also show none. Yet the life of ROGER TICHBORNE was the life of a fool, and the life of that man is also the life of a fool. ROGER TICHBORNE must, in fact, have been the biggest fool that ever entered the Carabineers. But what a terrible idea Lady DOUGHTY must have got of him after the 22nd of June, when, for some reason or other, she utterly repudiated the idea that there ever could be a matrimonial connection between ROGER and her daughter. You must bear in mind this 22nd of June through all my remarks. Lady DOUGHTY was right in closely watching the character of the man to whom her daughter's happiness might have been confided. Lady DOUGHTY was a woman of keen discrimination. She was evidently at the time receiving communications from various persons who knew the intense interest she felt about this young man. Probably it was suspected that one of the chief aspirations of her life was that there should be a matrimonial alliance between the two. Up to June, 1852, that lady's letters were in a tone of

REV. CHARLES KINGSLEY.

the warmest affection and fervent interest, and contained affectionately expressed wishes for his welfare. She advises him as a mother might; Tichborne Park and Upton are open to him at all times, and he is welcomed as a beloved and honoured guest. But after June, 1852, there is a sudden change of tone and feeling, and a species of command has gone forth that "Henceforward all our relations shall be courteous and polite, but you shall never again enter my house—at all events, whilst my daughter is there. Your uncle feels an interest in you, and so do I; but you shall not even come into the county." We shall see by-and-bye whether the reasons this lady put forth for this command excluding him from Tichborne and Hampshire are the real reasons. Reasons she, no doubt, gives; she was bound to give *some* reasons; but they are reasons which a lady would give who had been brought up in a Jesuitical school and amongst Jesuit advisers. They were not the true reasons, and their object was to deceive the world. Gentlemen, what was it that happened in June which caused that extraordinary change in her feelings? We know now that ROGER TICHBORNE is supposed to have informed the Abbé SALIS, or some other French priest, of the great affection he entertained for his Cousin, he being then only 17 years of age.

The LORD CHIEF JUSTICE: That must be a mistake. He did not see her until 1849.

Dr. KENEALY: I was about to say it is altogether a mistake; but he is represented as telling the priest that it was an affection of a respectful nature—an assertion that militates against the truth of the whole story. I cannot imagine his creating a suspicion in the priest's mind by assuring him that the affection was of a respectful nature. I say that that is not likely to be true. Would he disgrace himself, I ask you, by saying it was of a respectful nature? A worse slur, in my mind, he could not cast at the lady. It is clear, however, whether this story be true or false, that ROGER, from an early period, had a partiality for his cousin, and although, in consequence of Miss DOUGHTY being so young, she did not appear at that time to foster it, nevertheless the whole purport of the letters shows that there was nothing to which they looked forward with greater pleasure than a matrimonial alliance between them. Well, Gentlemen, that month of June, 1852, arrives, and then we hear of an extraordinary circumstance which took place; but we have no plain or intelligible reason why ROGER TICHBORNE was upon that occasion summarily dismissed. After that date, Lady DOUGHTY utterly repudiated the notion of a matrimonial alliance with him for her daughter! There was probably no one in the world that knew him so well. She was a woman of extraordinary shrewdness and powers of observation. Up to June, 1852, her letters breathe a tone of the warmest affection, and the greatest wish for his society. She regarded him as a mother might regard her son. He was always welcomed by her as a favoured, a loved, and an honoured guest. After June, 1852, however, all is changed, and I ask, Why? In the first instance, there may have been some little explosion between him and Sir EDWARD, but it is clear that all that was made up, for we find Sir EDWARD consenting to the marriage if at the end of three years circumstances should be propitious. What then occurred on the 22nd of June to alter the whole face of the

matter? What astounding circumstances happened that dispelled all those dreams and destroyed all those hopes? We must conclude that, notwithstanding the carefully masked words of Lady DOUGHTY, a ban of exclusion had been pronounced.

The LORD CHIEF JUSTICE: Not till the first of July.

Dr. KENEALY: Well, I am not particular as to the precise date.

The LORD CHIEF JUSTICE: But the date is of some importance, for in those ten days Lady DOUGHTY might have received information to alter her views.

Dr. KENEALY: Lady DOUGHTY already knew his character as well as I know my own. All the letters show that she knew all the ins and outs of it. He could not have an illness but she would attribute it to drunkenness, or to some other cause. She had been studying him for years and years; and, therefore, if we are told that something came to her knowledge about his character between the 22nd of June and 1st of July that altered all her views respecting him, I must ask you to receive the suggestion with the greatest caution. It must have been something of an untoward nature which made her at once give up the whole purpose of her life. We cannot tell what it was. We do not know and we never can know what it was; but it must have been some unforgivable offence, some unparalleled insult, something that no one dared commit to writing. That is the sole solution that I can see of the difficulty. I must recall your attention to the evidence of GOSFORD on this particular episode, and I invite you to believe that GOSFORD, if he had thought fit, could have enlightened us on the subject. GOSFORD gave us his narrative of the Sealed Packet transaction. Why on earth should a vow to build a church be made the subject of a Sealed Packet? Was there anything disgraceful in the promise to build a church if he married his Cousin in three years? Can any man in his senses believe that that really was the subject of the Sealed Packet? That there was a Sealed Packet in January, 1852, we know. The whole of this man's life is a species of secrecy and mystification. He hardly did anything without a secret. His letters overflow with such phrases as "Burn this," "Let no one know of this letter." He took delight in secrecy and mystery. There is nothing wonderful, from the whole tenor of his life, in his having private wishes and intentions of the most insignificant kind probably connected with some excess of his own. You have, no doubt, remarked that, notwithstanding the frequent request in the letters, "Burn this," Lady DOUGHTY and Mr. GOSFORD preserved his letters—an astounding breach of faith, in my opinion. This gentleman before you is a man of secrecy. He has a private mark for his letters, and a private mark for his cheques. Altogether he exhibits a love of secrecy and mystery indicative of a curious class of mind, and of the Jesuit education which ROGER TICHBORNE was imbued with at Stonyhurst, so far as he was imbued with any education. Anyone who has read the cross-examination of the Defendant can hardly fail to come to the conclusion that the man had been brought up in a Jesuit school. I submit it is impossible to resist that conclusion. There are evasions—there are equivocations—there are fencings, which all betray a Jesuit origin.

The LORD CHIEF JUSTICE: Are the Jesuits, then, the only cunning people that there are in the world?

Dr. KENEALY: They are the most cunning. (A laugh.) ROGER TICHBORNE might not be able to comprehend the splendid whole of the cyclopædia of deceits, but the traces of it remain, and in almost every page of that cross-examination you can smell Stonyhurst. (Laughter.) All this secretiveness of his is perpetually shown. Mr. HAWKINS talked of his "clandestine habits of smoking."

The LORD CHIEF JUSTICE: The others did the same.

Dr. KENEALY: Well, my lord, they were all under the same auspices. (A laugh.) All his associations at the College were anything but calculated to produce a feeling of frankness. It was stated by one of the priests that it was carefully concealed from the students who amongst them was intended for the priesthood. This was a most terrible example of secrecy, to set a number of young men walking about among their fellow-students as with a mask and domino on their faces, because they were to be priests. Can you conceive any ordeal more destructive to the candour of the mind and the honesty of the heart? Conceive a boy walking about, carefully guarded from his schoolfellows, with the secret in his heart, "I am to be a priest." ROGER, remember, was brought up mainly among women, and that is calculated to affect manliness of character and to encourage secrecy, and possibly dissimulation.

The LORD CHIEF JUSTICE: Who was?

Dr. KENEALY: ROGER TICHBORNE.

The LORD CHIEF JUSTICE: ROGER TICHBORNE?

Dr. KENEALY: His Mother was the only person who brought him up till he was nearly 16. He was kept in girl's frocks and petticoats until he was 12.

The LORD CHIEF JUSTICE: There is nothing to show he was brought up among women. He was brought up by a woman, if you like—his Mother. He was not brought up among women at Stonyhurst, where, I suppose, there were only one or two old attendants.

Dr. KENEALY: Gentlemen, he was not brought up among boys of his own age who might have developed something of manliness in him. That is the advantage of our public schools, where anything like dissimulation or anything mean or contemptible is soon kicked out of a boy. When he was in correspondence with Lady DOUGHTY, what sort of habits did she encourage him in? To write his private thoughts to her, and letters that anyone might see for Sir EDWARD—one letter for the uncle and one for the aunt. Everything conspired to make this ROGER TICHBORNE a person of secrecy, so that we must not be surprised when we find him confiding to GOSFORD some private wishes and intentions which GOSFORD does not subsequently produce. I say that it is incredible that they should have referred to a church. There was no reason for privacy, no necessity for committing them to paper. They were to be carried out after his death, and they had reference to something or other which he did not think it wise to make public. That they should have had reference to the building of a chapel or church I look upon as perfectly absurd.

A JUROR: In his letter to GOSFORD he refers to the building of a church.

The LORD CHIEF JUSTICE: It must have had reference to something that was to be carried out by GOSFORD as distinguished from his will. All about the will is confided to SLAUGHTER. He has not included it in the will because it is to be done in his lifetime.

The JUROR: I think the letter to GOSFORD is in January, 1852.

[Mr. Justice LUSH read the letter. It said, "I have written out my will and left it with SLAUGHTER. The only thing I have left out is about the church, which I will build under the circumstances I have confided to GOSFORD."]

Dr. KENEALY: He connects, as you see, the church with his will. You remember the original letter he wrote in GOSFORD'S presence. "My private wishes and intentions after death"—and then that is struck out, and the words are inserted, "If I live." Those private wishes were undoubtedly connected with the will. It was to be a thing that would take place after his death. In that letter to GOSFORD he says he leaves that out of his will, still showing that it was something or other that would take place after his death.

The LORD CHIEF JUSTICE: No; he was conscious that he had made a mistake, so he struck it out and wrote it right.

[Mr. Justice LUSH read the passage as amended—"My private wishes and intentions, as I intend to have them carried out if I live, I have confided to GOSFORD."]

Dr. KENEALY: Undoubtedly that letter alludes to the will, as if there were something which might be put into the will, but which for private reasons he excluded. He may have thought it would be an atonement for something wrong that he had done to build a chapel to the Virgin. He may have had private wishes in addition to that for providing for some person to whom he had done wrong, which I can very well understand. But to make such a fuss about simply building a chapel if he married within three years, and sealing up the promise in a packet, I tell you it is incredible. GOSFORD tells us that that document he received in January was practically a fac-simile of that given in June to Miss DOUGHTY. I invite your attention to the language of the document, "I make this day a promise," and ask you whether that is consistent with his having made a similar promise six months before? I lay very great stress upon such language as that, because to any ordinary mind it would appear from it that it was a novelty to his mind. If it had not been so he would not have used the words, "I make this day a promise"; and I say that such language indicated that there was something or other which occurred on that day which leads him to single out that day above all other days of the year. The one document was dated in June, and I submit it could not have been the same as that which was given to GOSFORD in January, as he uses the words I have already dwelt upon, "I make this day a promise." But, Gentlemen, is it not a very extraordinary thing if that document which he deposited in January with GOSFORD had reference simply to such an innocent matter as the building of a church, that throughout the entire of the correspondence which he maintained with this gentleman there is not one particle of allusion to it? I can well understand ROGER TICHBORNE having, for certain reasons, responsibilities and duties weighing upon him which he was unwilling the world should know, but which his own conscience told him ought to be discharged; and in such a case I can understand him depositing a document of this kind and maintaining the most inviolate secrecy about it. The very deposition of the document implies secrecy, and possibly shame; but I can't understand a man like TICHBORNE depositing an innocent document like this, that on the whole was creditable to him.

The LORD CHIEF JUSTICE: Does he not allude to his promise to build a church in a letter to SLAUGHTER?

Dr. KENEALY: That was in a subsequent correspondence. In his letters to GOSFORD, after January, he never makes any allusion to the Sealed Packet, as though there were some circumstances of shame connected with it.

Mr. TAYLOR (Juror): He said to Lady RADCLIFFE when he gave her the document that he had given a similar one to GOSFORD.

Dr. KENEALY: I am talking about his correspondence with GOSFORD.

The LORD CHIEF JUSTICE: Do you say he did not leave the document with GOSFORD in January—that the date is not right?

Dr. KENEALY: No. I say it is very likely he did leave a document in January, containing private wishes and intentions.

The LORD CHIEF JUSTICE: Then do you suggest that he seduced his Cousin as early as January, 1852?

Dr. KENEALY: No. I entirely disconnect that document with the seduction.

The LORD CHIEF JUSTICE: You put the document as antecedent to the seduction? The whole theory of the Sealed Packet, so far as you are concerned, is this—that it was given to protect Miss DOUGHTY against the apprehended consequences of what had taken place between her and her Cousin.

Dr. KENEALY: Yes, but after June.

The LORD CHIEF JUSTICE: It would not have been the document connected with the seduction?

Dr. KENEALY: No, it is not the same document.

The LORD CHIEF JUSTICE: He swears he never gave GOSFORD but the one packet.

Dr. KENEALY: Very likely he swears that. I am saying that the document he gave GOSFORD in January was not the only one GOSFORD received, and I am asking the Jury to believe that. In support of that argument I point out that the man was always using secrecy, and I say we ought not to be surprised, from the peculiar character of his mind, at his giving GOSFORD a document of that nature. My argument is that he gave a document, connected with some matter to which he never after alluded in his correspondence, to GOSFORD in January, but that he never did give the real Sealed Packet until late in the autumn of 1852.

The LORD CHIEF JUSTICE: He swears he never gave GOSFORD but one document.

Dr. KENEALY: Would your lordship refer me to that part of the evidence of which you speak?

[Mr HAWKINS here found the reference.]

Dr. KENEALY: What he says is, "I never gave but one *Sealed Packet*." He does not say document.

The LORD CHIEF JUSTICE: But we are talking about the Sealed Packet.

Dr. KENEALY: I am making a distinction between the *document* which contained his private wishes and the *Sealed Packet* which he gave to GOSFORD later in the year. In his cross-examination at the Common Pleas the Defendant says he never mentioned the document to any living being until GOSFORD referred to it. He is asked: "Just answer the question about the Sealed Packet. Was there anything whatever in the Sealed Packet about the church?—No; *not in that*." That there was only one Sealed Packet is evident. That the document in which "my private wishes and intentions" are spoken of is entirely distinct from the Sealed Packet which refers to the church is clear from the answer I have quoted, according to the rules of the English language.

The LORD CHIEF JUSTICE: When he is asked about the church he does not say that there is any other document besides that Sealed Packet. The whole examination, cross-examination, and re-examination proceeds upon the assumption that there was only one Sealed Packet, and it was never suggested that there was any other. The other matter to which you refer—namely, the question about the "document"—was slipped in in re-examination.

Dr. KENEALY: It may be "slipped in," but at any rate it is no novelty suggested for this Defence. It is not new to-day.*

The LORD CHIEF JUSTICE: There is no evidence of any other than the Sealed Packet.

Dr. KENEALY: I don't know why it is necessary to encumber the Sealed Packet with any allusion to any other "document." That is another matter altogether. The Defendant's Counsel says to him, "Answer me only the question about the Sealed Packet," as though there were some other document in the Counsel's mind.

The LORD CHIEF JUSTICE: If there was anything of that kind in his mind it was his bounden duty not to deal with the matter in that Jesuitical manner. *It was Jesuitical, I say, when he knew there was another document to examine, on the assumption that there was only the Sealed Packet. Talk of Jesuitism—it was Jesuitical to allow such an impression to remain.*

Dr. KENEALY: Well, it may have been Jesuitical. I am not concerned as to what Counsel then did. What is the meaning of the following answer in page 847: "*Were there any other private wishes and intentions that you had left with* Mr. GOSFORD *in writing except this matter?—Yes, there was.*" In page 864, we read, "I asked you the contents of the document, and you may refresh your memory, if you like to look at it? There are the subjects which I have told you. Is there anything else on any other subject?—In here? Yes.—No. Was there in the document?—*Yes, certainly.* Give me a notion?—*Instructions about the estates, and lots of things.* A great deal more than I can remember now." And there are many other allusions, I think.

Mr. Justice LUSH read the following extract from the cross-examination of the Defendant:—

"Did both documents relate to your Cousin?—Yes.

"And were those private wishes and intentions, which in your letter to SLAUGHTER you say you intend to have carried out, if you live, the same?—Yes.

"Whether one or two documents were in that packet, did they convey your private wishes and intentions?—They did."

Does not that identify it, Dr KENEALY?

Dr. KENEALY: I think not. I say that the Defendant made it clear that the Sealed Packet was distinct from something else.

The LORD CHIEF JUSTICE: Oh, dear no! It is anything but clear. In the whole of the cross-examination he never suggested anything else.

Dr. KENEALY: No, that is quite correct; but I say we are not to take his examination alone, but to take it with his re-examination. It is perfectly clear from the style of the questions and from the particular words on which the Counsel laid an emphasis, that his attention was fixed upon the Sealed Packet as distinct from something else. It may have been Jesuitical on the part of the Counsel to leave the matter as it stands, but that is a matter in which I have no concern.

The LORD CHIEF JUSTICE: If you put it that it was Jesuitical on the part of the Counsel, I say that I believe Serjeant BALLANTINE to be incapable of any such thing. I believe that he would have clearly framed a question to the Defendant, so as to leave no doubt on the subject.

Mr. HAWKINS: The Defendant is asked:

"Were there any other private wishes or intentions left with him to be acted on except the Sealed Packet confided to him, whether it contained one or two documents?—I think not.

"It is a plain question?—To the best of my belief I think there were not."

Dr. KENEALY: I think that is no denial at all. There is as positive an implication as can be made that he had in his mind some document different from the Sealed Packet, and was determined to confine his answers solely to the Sealed Packet. But Mr. HAWKINS forgot to read what follows, which my friend Mr. MCMAHON thinks important:

"Was there or was there not—I must have an answer to that?—I do not think it is fair for you to make me say one thing or the other.

You are always putting that I am trying to make you answer untruly?—You certainly do."

The LORD CHIEF JUSTICE: If you read that carefully, you will find the whole of it relates to the Sealed Packet containing more than one document.

Dr. KENEALY: Whether it contained one or twenty I do not care a straw. (A laugh.)

Mr. Justice MELLOR: A little farther on he was asked by the Judge:

"Was there any other paper besides the one or two in the Sealed Packet?—No, my lord."

Dr. KENEALY: I interpret that to mean that there was no other document which was the subject of question at the time. The Defendant says, "I don't think it fair for you to try to make me say one way or the other." Why was it not fair, Gentlemen? If you will supplement that with the language he uses when he is asked to confine himself to the Sealed Packet, you will, I think, find an answer to that question, namely, that there was another packet besides the one speaking of the church. No language can be stronger than that used by the Defendant when he speaks of a certain subject not being mentioned "in *that*," namely, the Sealed Packet. It clearly implies that it was mentioned elsewhere, and was quite enough to put the Solicitor-General on his guard, and to entitle him to ask the Court to be allowed to put another question on this new matter brought into the Case, if he had thought it expedient to do so, which he did not.

The LORD CHIEF JUSTICE: I quite agree with you in that.

Dr. KENEALY: This Sealed Packet, confided to GOSFORD in 1852, GOSFORD tells us he destroyed—that is, he tells us now he destroyed it; and I am going to call your attention to the fact that this is a very different account to that which he gave BULPETT. If it contained such matter as the Defendant says it did, I can easily imagine after ROGER was thought to be drowned and Lady RADCLIFFE married and settled, that GOSFORD would believe that he had a good reason for destroying it; but if it only contained a promise to build a church, I cannot conceive it being looked upon as anything but an interesting memorial of the lost ROGER, and I cannot understand GOSFORD taking any other course than that which would have recommended itself to any honourable man, namely, handing it over to Lady RADCLIFFE or to Lady DOUGHTY. I cannot imagine a man destroying an innocent document. I ask you to take this as an additional reason why you cannot accept Mr. GOSFORD's account of the document which he says he destroyed, and which was a *facsimile* to that given to Miss DOUGHTY. So much for what occurred in January, and before I proceed further I wish to ask you to bear in mind the series of observations I addressed to you on this matter in my last Speech. If you do not remember them all I can only refer you to the report, and ask you to be good enough to look at it and consider the observations I have already made in this Summing-up. Again, Gentlemen, before we pass finally from it let us consider the language contained in the Sealed Packet, namely, "I propose to build a church." Can that possibly come under the designation of "private wishes and intentions"? It cannot. It is in the nature of a solemn vow, as it were, and it partakes of a religious character, and cannot come under the head of "wishes and intentions." It may have connection with the building of a church founded on certain penitential considerations, but to say that that should be the subject of a Sealed Packet seems to me to be out of the question. But the other document referred to would

* The state of the Case on the subject of the "document" and the "Sealed Packet" (for they must not be confounded) appears in the Claimant's evidence in the C.P., pp. 733, 829, 847, 850, 851, 852, 853, 854, 855, 857, 864, 866, 867, 868, 870, 1648, 1649, 650, 1653, 1820, 1821, 1822.

need to be a Sealed Packet. There was no necessity whatever for ROGER to make confessions like those of ROUSSEAU. Why should he make the confession that he did, under the pressure of HOLMES? It is a singular thing, and I ask you to look at it in this light, that the idiosyncrasy of ROGER TICHBORNE is in harmony with the idiosyncrasy of this Defendant in making confessions. ROGER TICHBORNE pours out his confession to Miss DOUGHTY, and the Defendant pours out his confessions to his lawyers. There was no need for ROGER to have made those confessions to Miss DOUGHTY; or to GOSFORD.

The LORD CHIEF JUSTICE: She says he did it at her request. It was not quite spontaneous.

Dr. KENEALY: Neither act was spontaneous. I say it is the same class of mind that pervades both men. If his mind had not been of the same character as ROGER TICHBORNE'S he never would have written at the dictation of HOLMES a document of such a nature. It was entirely unconnected with anything in the nature of marriage. I ask you to believe that, in consequence of the written language of ROGER TICHBORNE, and the spoken language of GOSFORD. TICHBORNE says: "I have seen enough of married life not to marry myself. I have done many foolish things in my life, but I hope to keep clear of that." These are TICHBORNE'S deliberate words. Don't you believe that if GOSFORD had had in his possession a document that indicated his intention of marrying, the Defendant or TICHBORNE would have said, "Send me back that document"? Do you think that this man of secrecy, who was asking every one to burn his letters, would not have said to GOSFORD, "By-the-bye, you have a document of mine in which I promise to marry my Cousin. Destroy it, or let me have it back"? Why, of course he would. But yet GOSFORD pretends differently. He has the audacity to swear in this Court, "I had a long conversation, which was a very painful one. I had a clear understanding that a letter from me would bring him back, at a moment's notice, wherever he was." That is all inconsistent with this letter, which, happily for the interests of justice and for the confusion of GOSFORD, is in existence. Another statement made by GOSFORD which is inconsistent with the marriage taking place is that any intermarriage would embroil the whole family immediately. That I put to you as powerful evidence that the document given to GOSFORD in January has nothing whatever to do with the document delivered to him in the autumn. I have already called your attention to the letter to GOSFORD from TICHBORNE on the 13th July, 1852, which was a time when he knew very well that there was an end to all chance of marriage between him and his cousin. He writes, "I shall feel obliged if you would write to me to let me know how the thing is going on, and if the crisis has taken place, as it is my intention to follow the army. I shall wait till I have got my Troop, and then go abroad for ten years." Supposing, Gentlemen, you had had such a document as it is said GOSFORD had, would you not have returned it? but GOSFORD, as he tells us, on the contrary, treasures it up. I am asking you to believe that GOSFORD had the document when he met Mr. BULPETT at the 'Grosvenor,' and to believe also that it still exists, although it may not be in the custody of GOSFORD. Now, Gentlemen, I pass away from that transaction of January, and come to what may have taken place in June, and I call your attention to a letter which was written on the 26th. You know that ROGER met his aunt and cousin in London some time early in the month —the 14th, I think. He was a good deal in the company both of his aunt and cousin, and he came down with them to Tichborne. He signs the document on the 22nd of June, and leaves the next day.

The LORD CHIEF JUSTICE: No, on the 22nd.

Dr. KENEALY: Well, he leaves TICHBORNE on the same day, and he leaves it never to return again as a guest. I will show you the sort of mind this young gentleman had at this time. He writes to GOSFORD on the 26th of June, from Canterbury:

"I am in hopes of hearing from Lady DOUGHTY soon. I hope she won't show too much diplomacy in her letters. Matters are too near a crisis for it. Moreover, her ladyship is rather a poor politician. I can see through it quite clear, and most likely you can also without much difficulty."

I wonder what on earth his meaning is. But the letter goes on, referring to some novels of PAUL DE KOCK which he had left behind, and requesting that they should be forwarded to him. He says:

"I am much in want of them, and also of a work which I bought when last in London, entitled 'Mon Voisin Ramon.'"

You see the particular companion which he carries with him to Tichborne is one which he might well take, if he had designs upon the honour of his cousin, but it is certainly not the sort of travelling companion for any man who was actuated by honourable love. What did he mean by that?

The LORD CHIEF JUSTICE: Is there anything to show that he took them with him then?

Dr. KENEALY: "You will find it in my sitting-room"—a strange place to leave such a work, open, so to speak, to everybody.

The LORD CHIEF JUSTICE: His sitting-room was over GOSFORD'S offices.

Dr. KENEALY: Well, this is the letter he writes to GOSFORD, and on the same day he writes to Lady DOUGHTY—"I have been in such a state of confusion ever since I have been at Canterbury that it has been impossible for me to write to you sooner." I wonder what put him in a state of confusion? Had his sudden departure anything to do with the confusion of his mind?

The LORD CHIEF JUSTICE: The state of confusion to which he referred was not of mind, I think. He meant confusion consequent upon the horses in the regiment being changed.

Dr. KENEALY: The allusion to the horses is in a different part of the letter, and was not connected with the confusion I allude to. The letter I am speaking of is the one he writes to his "dear aunt," subscribing himself "your very affectionate nephew," on the very same day that he wrote one to GOSFORD defamatory of Lady DOUGHTY. This shows the extraordinary double-facedness of the man. Then Lady DOUGHTY writes to him a very diplomatic letter, dated 1st July, which was his final *congé*, but which I submit to you does not contain the final and true reasons which were operating in her mind. She was a kind of diplomatist, but a very poor one. We know what a lady diplomatist means—it is a polite way of saying that she is not very candid.

But I had better read you these riddles of letters themselves:

(R. C. TICHBORNE to Lady DOUGHTY.)

"Cavalry Barracks, Canterbury.

"MY DEAR AUNT,—I have been in such a state of confusion ever since my arrival at Canterbury that it has been quite impossible for me to write to you sooner.

"I had a very fair journey from Tichborne hear, I arrived at Canterbury at half-passed twelve at night. I went to see the SEYMOURS when I passed through London, they enquired much after my Uncle. Mrs. SEYMOUR was, I am sorry to say, very unwell, she suffered much from a bad toothache, I was sorry not to be able to see her, I have heard nothing of our moves since I have been here, I think the Regt. is settled in England for some time to come. I have not heard of any news since I have been at Canterbury. ALFRED has giving up writing to me altogether, I must write to him some of these days to give him a good scolding about it.

"I have been rather unlucky with my horses since I have had them down from London, one has a bad cough, I hope that it won't get worse because I should be sorry to lose him as he is a good and fine charger.

"The weather is very hot about here, we have not had much rain lately—dry weather is much wanted for the hops.

"I hope that my Uncle is as well now as when I had last the pleasure of seeing him. Pray give him my love, also to my Cousin.—Believe me, my Dear Aunt, your very affectionate nephew, "R. C. TICHBORNE.

"June 26th, 1852."

[Envelope addressed—To The Honble. Lady DOUGHTY, Tichborne Park, Alresford, Hants.]

(R. C. TICHBORNE to VINCENT GOSFORD.)

"Private.

"Cavalry Barracks, Canterbury.

"MY DEAR SIR,—I have been ever since my arrival at Canterbury in such a state of confusion on account of my changing my quarters, that it has been quite impossible for me to write to you sooner to inquire how things in general are going on at Tichborne. I am in hopes of hearing from Lady DOUGHTY soon. I hope she won't show too much diplomacy in her letter; things are much too near a crisis for it, and, moreover, her ladyship is rather a poor politician. I can see through it quite clear, as most likely you can also without much difficulty. I should feel much obliged if you had the kindness to answer me by return of post to let me know how things stand at present, as it is of great importance to me at present. I have not heard of any news lately, except that much has been talked of here since my arrival of our going to Australia to the gold diggings * to have the pleasure of escorting the waggons. Medical men say that change of air would be good for us, as it would beautify our appearance, which would have been rather changed since we have received the order to remain at home. But on this occasion they will do as they always do in the same cases, wait till we have sold our Indian outfit, to give us the pleasure of buying a new one, and by these means putting us to as much expense as possible. I have not the least doubt that it will blow off in the same manner as the Cape and India. I should feel much obliged if you had the kindness to see that my books are sent to me. I am much in want of them, as also of a 'French work,' which I bought in London, which I have forgotten at Tichborne. The work is called *Mon Voisin Raymon*, in four volumes. You will find it in my setting-room. I wish you would send me at the same time, an English and French dictionary, which is also in my setting-room, with the list of my books which I have forgotten. I hope that my Uncle is still in good health. I wish to hear how he is now. I fancy that there will be soon much company at Tichborne. Have you heard from my Father lately?—Believe me, my dear Sir, yours truly,

"R. C. TICHBORNE."

Next follows:

(Lady DOUGHTY to R. C. TICHBORNE.)

"Tichborne Park, July 1.

"MY DEAREST ROGER,—I thank you for your kind letter and

* A remarkable phrase—and a remarkable anticipation of what afterwards happened.

should have answered immediately, only your Uncle wished for full time to consider over all that has passed, and though it is a painful task to me to write what may give you pain, it is no use delaying longer without telling you that he says he sees no reason to change from the decision he made during his illness —'that of not giving consent till our daughter was of age, and that she must be at perfect liberty to marry any person, in fine, that no engagement whatsoever should take place between you, added to our considering *her* too young to decide upon a choice that involves going contrary to the wishes of parents (we presume on *both sides*) and which is against the rules of the Church. *You* have not given any real proof of changing *habits* that have been the cause of endangering your life by bringing most serious illness, and which without resolute and determinately giving up, will *certainly* bring on a return of the same illness. Now without a long continued *proof* of these bad habits being entirely conquered, no parent (even if there was no relationship) would think themselves justified in giving their child to a person, who neither from a sense of duty to GOD, or attachment to their child could conquer *habits* that would be the ruin of the happiness of both; these then are our objections, and it is best you should clearly know them. You asked that our child might have permission to write to you, we certainly see great objections to this, for being under age she cannot act without the consent of Parents, therefore the less communication you have under these circumstances, the more free it leaves both. Now dear ROGER, though I have fulfilled duty that devolves on us, *you* are of course, at perfect liberty to act in this matter as you consider best for your own happiness. I only ask that you will write to tell me your decision, after you have well considered over this letter and that you will not take any precipitate measure but write clearly your own views in a letter that may equally be read by your Uncle as well as myself. In this letter I cannot write on any other subject. Has any change as to the destiny of your Regiment taken place? or does it remain in Canterbury? Your Uncle and Cousin send their kind love, write soon to your affectionate Aunt, KATHERINE DOUGHTY.

"Your Uncle this week was not so well as when you left, but yesterday and to-day rallying again."

Gentlemen, was ever any letter more false or hypocritical than this?

The LORD CHIEF JUSTICE: In a subsequent letter her ladyship clearly shows that knowledge of the engagement had never been communicated to Sir EDWARD DOUGHTY.

Dr. KENEALY: It is capable of that interpretation, and may be of another.

The LORD CHIEF JUSTICE: I thought it was as clear as anything could be.

Dr. KENEALY: The letter says, "Without a long continued proof of having abandoned your bad habits." How did she discover between the 22nd of June and the 1st of July, the date of this letter, that he was not reformed? What was it that conveyed to Lady DOUGHTY'S mind in that short interval that his habits were irreclaimable? It is not pretended that he had given way to any of his extraordinary habits in that visit to Tichborne. He had made a promise, and gave his honour, and she might have said, "You have broken your word, and I cannot entrust my daughter's happiness to you." As it was, she invents some other reason to put before the world. This was to be the excuse for something else that lay beyond.

The LORD CHIEF JUSTICE: Do you say those were not her real objections?

Dr. KENEALY: I say they were not her real ones.

The LORD CHIEF JUSTICE: *What a detestable hypocrite this lady must have been if she did that.* Here is a person who had attempted, if not compassed, the ruin of her daughter, and she writes to him and gives other reasons to put an end to their intimacy, which both of them must be aware was barefaced hypocrisy. I cannot imagine any mother doing such a thing.*

Dr. KENEALY: Would she have said, "In consequence of your conduct to my daughter, you must not come to my house again"?

The LORD CHIEF JUSTICE: No; but she might have said, "Never let me see your face again."

Dr. KENEALY: But surely these diplomatists never do things openly and straightforwardly?

The LORD CHIEF JUSTICE: She was a diplomatist, for in her letter of the 9th June she is seeking to fix ROGER without at all fixing her daughter. But if she knew that ROGER had attempted the honour of her daughter, to write such a hypocritical letter would not have been the act of a virtuous, properly conducted wife and mother, as we know Lady DOUGHTY was. *I cannot suppose that a mother would have been guilty of such a base, miserable, wretched hypocrisy as that.*

Mr. Justice LUSH: *I cannot conceive any mother on earth writing such a letter.*

Dr. KENEALY: Well, I should have thought otherwise, after that scheming and hypocritical conduct which the Lord Chief Justice has pointed out, in wishing to bind ROGER and yet leave her daughter free.

The LORD CHIEF JUSTICE: We know women are apt to scheme when their daughter's marriage is concerned, but writing a letter like that if he had conducted himself in such an abominable way, I cannot understand.

Dr. KENEALY: It is hard to understand all things. Now we will see whether he gives any answer to Lady DOUGHTY'S letter of the 1st of July. I can find none. It would appear that he writes her a letter on the 7th of July. I should have thought that a man who writes a letter to GOSFORD disclaiming and denying those charges would have written a similar letter to Lady DOUGHTY.

The LORD CHIEF JUSTICE: I think he has done it in a letter which bears no date. [His lordship then read the letter in which occurred the remark, "You have alluded to my bad habits, and I have told you that it has been my daily struggle to break myself off from those habits." He went on to say that he loved his cousin for herself alone, and that if she preferred another to him he would not endeavour to bind her in any way.]

Dr. KENEALY: I don't think the letter contains any evidence as to where the regiment is, neither does it bear a date.

The LORD CHIEF JUSTICE: It says: "It is not my intention to come to Tichborne for a long time unless you or my uncle wish to see me." That exactly corresponds with what he writes to GOSFORD, saying that it is not his intention to go back to Tichborne for a long time.

Dr. KENEALY: I don't at all dispute that what my lord has said may be possible, but it is a singular thing the letter is not dated. Now, here is a letter containing a denial of these assertions, and there is no answer to it. If any such matter was written it would be in existence, because GOSFORD delivered up all the correspondence of Lady DOUGHTY.

The LORD CHIEF JUSTICE: Surely it is her letter of the 12th of July—"How could you go on after your letter? I was truly grieved not to find you." She also says that she can only refer him to her last letter, and that Sir EDWARD DOUGHTY was quite unchanged.

Dr. KENEALY: She did not believe in his denial. He endeavours to set himself right and to have a meeting with Lady DOUGHTY, which proves inoperative; and Lady DOUGHTY refers him back to her letter, and says, "You shall not have my daughter." So I say that was not the real reason of that letter. He had a right to be heard in his behalf. She either believed the letter or not. If she did not, she must have had a very bad opinion of him; if she did, why should he not have gone back? She could have said he was simply a visitor there. Is it not perfectly nugatory to be asked to believe that he was refused because his presence would frighten away the whole country round from asking her daughter in marriage? In speaking of a supposed suitor of Miss DOUGHTY'S, ROGER observes to GOSFORD that he had better keep a "sharp look-out" in dealing with Lady DOUGHTY. Need I point out to you the innate falsehood and Jesuitry of the man who was carrying on a loving correspondence with his aunt, while at the same time he was writing to GOSFORD about her in a contemptuous tone. Need I dilate again upon the insincerity of ROGER?

Gentlemen, I am sorry to say that at no time, even from the beginning, was ROGER TICHBORNE sincere, or candid, or honest. How could he be, schooled and surrounded as he was? He was a hypocrite. He had no real idea of truth, or frankness. See what he says, in almost the first letter which he sent to his Mother from Stonyhurst. "*I must tell you that I have not always believed what you told me; though I may have seemed to think as you did.*" Fancy this from a lad of sixteen or seventeen! What a life of deception it indicates! What a career of seeming faith, and real falsehood! This is what his priests did for him—those priests, for censuring whom, I have been denounced so fiercely. No wonder that he hid himself in the woods—and was for so many years, a living lie—CASTRO, MORGAN; I know not what. Yet according to this Prosecution, to the testimony of officers of the Carabineers, and others, there never was a more truthful man than ROGER TICHBORNE. Alas! that gentlemen and ladies should be found to swear in this wise! So far from truthfulness being his characteristic, it was the very reverse. Read his Letters to Lady DOUGHTY by the light which his Letters to GOSFORD throw upon them; and nothing can be more false, or hypocritical. I mention this, because you have been already told; and it will be abundantly repeated by-and-bye, that ROGER TICHBORNE was the soul and essence of Truth and Honour; that you are to believe implicitly everything he says; and that this Defendant is not to be trusted. Bear in mind, therefore, these observations; but pay no heed to them, if on the examination which I suggest, you do not find them to be accurate and well-founded.

Grieved am I to paint this Defendant as he is; but ROGER and he were exactly one in mind. Who has worked harder for him than Miss BRAINE? But he has no gratitude for her aid. See what he says in his letter to his Mother, of Feb., 1868: "I am quite of your opinion as regards our Visitor; but still her affidavit is very useful to support your own; and I must act politely to her till I get her affidavit." Is not this in entire

* From the following passage in one of TICHBORNE'S letters to Lady DOUGHTY (June 12th, 1852), it would seem as if she had promised to destroy his letters to her. "I rely *on your word of honour* to keep every word contained in this letter, a perfect secret to everybody, and moreover to burn the letter as soon as you have read it." Had she given her "word of honour" to burn these private letters? If so, we know how she kept it. The above letter is thus marked: "*Private and confidential—to be burnt as soon as read.*"

unison with the sentiment conveyed in his Letter from Stonyhurst, which I have just cited. We are told that Miss BRAINE told him wonders, that she "coached" him in everything. If she did how worthless and ungrateful he must be! But this paragraph, I submit to you, is almost conclusive proof that she did not. If she had, he would not be a Man to speak of her in that contemptuous way.

Gentlemen, ROGER writes again to GOSFORD on the 17th of July, and says, "Lady DOUGHTY quite approves my intention of not speaking of what has passed unless questioned by my father, in which case I am advised to answer in an open and sincere manner." What a singular passage that is. What has passed? I suggest to you that something had happened which would not bear the light.

The LORD CHIEF JUSTICE: Do you mean that he was to tell his Father everything that had taken place between him and his Cousin?

Dr. KENEALY: I suppose that when she advised him to answer in an open and sincere manner she meant the very reverse.

The LORD CHIEF JUSTICE: Does her letter imply anything on the face of it which would lead you to think that she meant just the reverse?

Dr. KENEALY: I do not know, but it is very odd that she puts these words in italics.

The LORD CHIEF JUSTICE: Does he not reply as if that involved an imputation upon him? He resents her suggestion that if the question were asked of him he could possibly give an untrue answer.

Dr. KENEALY: Then on the 30th of July he writes again, and it is clear that there is something which makes him dread the meeting with his father. He says, "I have just received a letter from my Father, and he expresses a wish that I should go to Tichborne. That is a thing which I strongly object to." Why should he object to meeting his Father at Tichborne?

The LORD CHIEF JUSTICE: He had just stated in his previous letters that he did not intend to go to Tichborne. Then came a letter from his father pressing him to go there, and he writes and says that is a thing he does not intend to do.

Dr. KENEALY: As to his going to Tichborne again we know very well that he would not have been received there. This letter was a piece of diplomacy. He dared not go there. Then in his letter to GOSFORD of August 7th there occurs another very curious passage. He says, "For my own part I will have nothing more to do with her in those private and confidential ways. If she writes to me on the subject I will write such a letter that she will be able to show it to anybody." What does he mean by that? I am in the region of diplomacy, and I do not understand it. These people appear to be using "language only to conceal their thoughts." Evidently he is under the impression that something or other may be communicated to his father at Tichborne, and we find him again writing to GOSFORD on the 10th of August, "I hope nothing unpleasant will take place between my father and my uncle." What thing unpleasant could take place? According to the tenor of this letter, that thing was in his mind.

The LORD CHIEF JUSTICE: Does that letter have any reference to himself? His Father and his Uncle had both hot tempers, and on former visits they had quarrelled, and that created at one time an estrangement between the two brothers, and I think he says it would be a pity if they fell out. That has no reference to him.

Dr. KENEALY: There is no further reference in that letter to anything connected with his visit to Tichborne at any time. Then there is a letter to GOSFORD of September 25th, 1852—"I shall be obliged if you will let me know by return of post if you can find me somewhere in Hampshire a hunting box with stabling for my four horses. I should like it to be within ten or twelve miles of Tichborne, not nearer, as I do not wish to be or to have anything to do with the Family." Now, observe the remarkable language which GOSFORD uses about this, and see whether it is consistent with the idea that she merely broke off ROGER'S connections with the Family because she did not wish it talked about in the county. And, bear in mind, GOSFORD is a man who well weighs his words. GOSFORD says that when ROGER TICHBORNE announced his intention of going down into Hampshire, "Lady DOUGHTY was horrified at the idea." What! Why should she be horrified at ROGER TICHBORNE being within ten or twelve miles of Tichborne? I can very well understand her horror if she thought there would be any renewal of proposals or repetitions of what I suggest had happened between him and his Cousin. Then she goes on to say, "It would be impossible to make the reason known." Can there be any other reason except that there was something or other which gave her a horror of his coming near the house? Why, I ask, was it impossible to make the reason known? Then TICHBORNE writes to GOSFORD, and speaking of Lady DOUGHTY, he says, "She makes me believe that there is something going on; something on her mind. What it is I cannot say. I cannot see what objection she can have to my staying in Hampshire, as it is not my intention to be within ten or fifteen miles of the house. I cannot see what she has against that. She will not see or hear from me more than if I were in Ireland. Let her say what she may, she cannot prevent it." Now, all this is inconsistent with the theory of the Prosecution, that she merely wished to prevent people saying there was no engagement. Then Lady DOUGHTY writes him almost an entreating letter not to come into Hampshire, and says that if he persists in his intention "you should make known to your father the circumstances that have occurred." Those words are underlined. Was that a threat to the effect that "if you come here we will tell your father what has occurred"? Is that a diplomatic way of putting it? And after some further correspondence on the subject, Lady DOUGHTY writes:

"Your determination of living in Hampshire involves far greater considerations, inasmuch as the happiness in life of others may be involved. As parents we have a duty to perform, and must represent plainly to you the position in which you would place yourself and us by coming to live in this county; for if we did not receive you it would be rather a slur on your own character by leading the world to suppose there must be serious cause for your being banished, or they must know the truth. You are aware of *the reports that are current*, and would it be behaving honourably towards us to shackle the choice of our child?"

What reports current? Surely that means something much more significant than the Prosecution will allow. Then again on the 14th October she writes:

"You must greatly miscalculate our affection for you to think it could be a matter of indifference to us to have you in the same county, even 20 miles off, as to have you at Canterbury, where as a military man you could not have leave at all times to come to us; but within a distance that must be most painful, to deny ourselves seeing you here, and exposing both you and ourselves to the conjectures and censures of others, and making us all the *subject of remarks*."

Why, the things do not agree. How could his being fourteen or fifteen miles from them shackle the choice of their child? She says, "Your uncle, in his last conversation, explained his wishes on that point." That is not true.

The LORD CHIEF JUSTICE: Why not?

Dr. KENEALY: Is it consistent with the promise to build a church, when the uncle positively told him he would not allow him to marry his daughter?

The LORD CHIEF JUSTICE: No, but he did not wish them to make an engagement until she came of age, and they did not wish to put any restraint on her choice if she thought proper to marry anybody else.

Dr. KENEALY: But did they seriously mean that these two young persons should be separate from each other for three years, and at the end of that time marry?

The LORD CHIEF JUSTICE: I do not think that up to the 22nd of June there was any disposition to exclude him from the house or the county, but they certainly did intimate a desire that there should not be an apparent engagement in the face of the world.

Dr. KENEALY: But I say that all this language is inconsistent with what took place. It is hardly consistent with honour, either on the part of ROGER TICHBORNE, or with honour and filial obedience on the part of this young lady, if there was that conversation between Sir EDWARD DOUGHTY and this young man on the 22nd June, and I ask you to come to the conclusion that there was no such conversation. Lady DOUGHTY says: "Your Uncle, in his last conversation, explained his wishes on that point, and after that could he encourage you to come here without your Father being aware of the circumstances?" And the word "Father" is underlined, as if she meant to say, "We will tell your Father the real reason why you cannot come here." She says, "It would be painful to us to have you constantly hunting with the hounds and not to see you. It would be exposing you and ourselves to reflections, and harrassing to our feelings, besides closing the prospect of freedom of choice." Now ROGER TICHBORNE did not in reference to this letter use the language of angry remonstrance which one would think he was entitled to use. He seems to write in the words of a guilty man, conscience-stricken and craven before the Aunt whom he had injured. Writing on the 10th of October, he says: "I should so contrive it that you would not see or hear from me any more than if I was in Ireland. I have given up altogether going to balls and parties, so that if you go out anywhere you will be under no fear of meeting me." Would any man, I ask, write these letters unless he knew there was a reason for it? Then on the 24th of October Lady DOUGHTY writes to ROGER: "You very greatly miscalculate our affection for you, who have made you as welcome as our own child, if you think it a matter of indifference to us to have you in the county even at twenty miles off. It must be painful to us having you here and exposing both you and ourselves to the conjectures and censures of others." What censures of others?

The LORD CHIEF JUSTICE: *Not receiving him!!!*

Dr. KENEALY: Censures, if you like. If there were reports and scandals current, then there would be censures. The whole county might fairly cry out if some wicked persons had spread scandals. Lady DOUGHTY again writes on the 17th, and says:

"You say your father will not make any remarks about your settling in Hampshire; this would appear as if you understood we were afraid of your father making any remarks that might bring about any explanation with him. To this your uncle and I answer that, having acted throughout from a sense of duty combined with a kind feeling towards all parties, we have nothing to fear, and would much like to hear you answered him without any evasion whatever. Besides, we are now told he has been for above a year aware of the reports current. You are at liberty to take any steps you like, being quite independent."

The words "above a year" and "reports current" are under-

lined. Then TICHBORNE writes to GOSFORD on the 23rd: "As I see it is perfectly useless for me any longer to try to make myself understood by Lady DOUGHTY, I shall feel obliged if you will explain to her that she is at liberty to tell my father at any time she likes what are the reasons I do not wish to go to Tichborne." Very likely. He was quite safe in giving her permission to do that. He goes on—"And so far from wishing to make a mystery of it, it is perfectly my intention to let my father know the affection between me and my cousin. She seems to accuse me and make it a crime of my keeping all that has passed quiet, as I think it best to do at present. However, let the case be as it may, so far from wishing to keep the thing secret I shall make it known to my father or to anyone else she wishes." So that here we have a case of diamond cut diamond. You threaten me, and I threaten you.

Gentlemen, before I leave this wretched subject, than which none ever gave me greater pain, I wish to close with a letter written by Lady DOUGHTY, and dated 28th of October. She alludes in it to something that has recently passed, but we are kept ignorant of what it was. Among the other conundrums in this Case, this elegant epistle seems to be one.

(Lady DOUGHTY to R. C. TICHBORNE.)

"Tichborne Park, 28th October.

"MY DEAREST ROGER,—Having had to go to Winchester to-day I have scarcely as much time to answer your kind long letter as I could wish—yet I will not delay as you tell me you will be in Town to-morrow, and I conclude as you proceed to Upton you will have taken leave of your Regiment—the *deed* being *done*, it is now useless to refer more than necessary to the arguments which I put as *forcibly as I could*, when first you allowed your intentions to be made known to us, and which I *then thought* calculated to deter you from taking any precipitate step, because certainly by it, you have thrown us all into difficulties without real necessity for doing so, for by your wish to settle in this county and our objecting to it unless we could have made you as welcome HERE as formerly, and therefore we offered Upton, we felt ourselves compelled to give some explanation to your Father and your Uncle dictated what I said, simply stating the fact of offering Upton till LET, and the necessity at present of avoiding doing anything to strengthen a report (of which he was probably aware) and which had obtained so much credit, that our duty compelled us not to throw you constantly together when we disapproved any attachment beyond that which we hoped might ever—continue—. This is the *chief substance* of what I wrote to him and which we were decidedly right in writing to your Father—you say 'that it was best to keep all that was passed secret at present, as you had objected to my letting your Father know, when I offered to do so, when last at Tichborne *that* was the time to make what had passed known.' To this I must remind you of what I told you *then*, that having had a subsequent conversation with my child and finding that her mind was far from being made up but that she was much agitated and earnestly *wishing* for a longer time to consider *whether* she really did give you that decided preference to all those she had ever *seen*, that with a *safe conscience* she could give a decided consent to your asking your Father's consent as the first step towards asking a dispensation from the Church; and in her state of uncertainty I could not, as a Parent, have allowed you to send that letter, and most kindly *you* immediately gave up doing so—time has been left for reflection and a crisis might certainly have been avoided had all quietly dropped, had you continued in a profession which gave a pretext at least, to being away from your family, you have taken away that *pretext* and then most painful does it become to us not to see you, but our duty must supersede inclination, and we could not be justified after what so *recently* has passed, to run the risk of any *renewal*, but the trial is augmented by the step you have taken. We have no answer to our letter to your Father, or did we expect it, as yet we earnestly hope, dear ROGER, we may be comfortable at Upton, if it is not let, but there are some of our friends who will, no doubt, invite you, and whom we hope you may visit for your solitude is indeed a painful thought to us, and never, as I have often told you, thinking I could be affronted by what you say or *write openly*, few could love you better or wish you more happiness than myself and I always cherish a hope that the day may come when you are a settled and a happy man, with kindest love—Your affecate. Aunt

"K. DOUGHTY."

[Envelope addressed—ROGER CHAS. TICHBORNE, Esq., Upton Park, near Pool, Dorset.]

Upon the subject of the seduction, or attempt, or whatever it was, I have the greatest reluctance to speak. I passed it over lightly in my first Speech. I do not like to dwell upon it now. A most violent effort will no doubt be made to satisfy you by dates and documents, neither of which may be reliable, that no such thing could have happened. Gentlemen, they say that there are people "who can prove anything by figures;" but that is only where they can "cook their accounts." There may be persons also who can prove anything by dates. You may be told that the Defendant was here, there, and somewhere else, when he may have been at the Mill. ROGER TICHBORNE, the man of mystery, meditating to gratify his desire, is not always to be depended upon in his statement of his travels. He may have written to throw those who may have suspected him off their guard. He may have said that he would be at a certain place, on a certain day, meaning to be at an entirely different quarter. And we know on good authority, that where passion urges either man or woman,

"Love will find out the way."

Gentlemen, when Lady RADCLIFFE resolved to come into the box, it was probably whispered to her from Dr. JOHNSON, or some other casuist deep in the subtlety of the schools, that Lying and Equivocation were at times excusable, lawful, and even justifiable: and that where a woman's honour was at stake, she might fairly deny the truth of any imputation upon it, by whomsoever, and no matter how truly made. Now I am not ungallant enough to say that Lady RADCLIFFE went this whole length. I would rather leave that to *your* decision, than express any decided opinion of my own. If she did, there are some who would be found to approve: and I have no doubt that all who study Dr. JOHNSON in his symposiac or cecentric moods, will eagerly defend the lady.

Note, I pray you, the marvellous agreement between certain passages in ROGER'S letters to Lady DOUGHTY (which this Defendant, of course, if he were an Impostor, could never have seen) and his language when he meets Lady RADCLIFFE. In a letter without date, but written in July, 1852, he says, "*And moreover what has taken place will never be told to anybody whatsoever by me as long as I live.*" Again, writing from Valparaiso, June 29, 1853, to Lady DOUGHTY, he says, "You may rest assured, my dear Aunt, that what has passed between me and my cousin (though I feel as much attached to her as ever I was) *has never been told by me to anybody; and moreover never will be spoken by me to any living soul.*" Compare this with the Defendant's cross-examination (page 1529). "Did Mr. RADCLIFFE ask you why you had not been to Lady DOUGHTY'S?—No, he did not. The only words Mr. RADCLIFFE said to me were, 'Now here is your Cousin, who knew you, and who can talk about old times, you know.' I said, '*What happened between her and me in old times is sacred, and will never come to you.*'"

Need I waste a word of comment on this astounding identity of thought and words?

Gentlemen, I have been told that certain words which I have spoken will recoil on my own head. Be it so. I am willing to bear the brunt. The newspapers tell me many things. My anonymous correspondents, on postcards and in caricatures, tell me a great deal more. What I have said, is said. What I have done, is done. Neither is regretted by me. I do not withdraw a word that I have uttered in this Trial. I have been asked to do so. It would probably have been expedient for myself to give in and eat humble pie. The willow withstood the tempest, and lived through storms by yielding to every blast. The oak resisted, and was swept away. I am that oak.

[The Court then adjourned for luncheon.]

On reassembling, Dr. KENEALY proceeded with his address. After commenting on passages from the letter of Lady DOUGHTY in which she says her daughter had not fully made up her mind that she preferred ROGER TICHBORNE to all others she had seen, he remarked—I say that the whole of this correspondence on both sides indicates deceit. I now pass to the evidence of GOSFORD. Before I enter upon it, in reference to this particular issue, let me, for the sake of the date, which is of the highest importance in this Case, point out that Hermitage Farm was bought in February, 1853.

The LORD CHIEF JUSTICE: Is that in GOSFORD'S evidence?

Dr. KENEALY: Yes. Mr. GOSFORD, Gentlemen, casts an imputation on Mr. BULPETT that he communicated to the Defendant everything he had told him in confidence, but this is expressly denied. With reference to the Sealed Packet, GOSFORD says, "He left with me when he went abroad," not "he left with me in 1852," but when he went abroad. Is not this cogent evidence that the document was not deposited in January, 1852? Bear this in mind, I beseech you. He then says, as to the interview at the 'Grosvenor,' between BULPETT, the Defendant, and himself: "Just at that time, whether BULPETT noticed that we were talking privately or not, I do not know, but he came back and said, 'I do not want you to be talking about these things, I want you to talk about something you both know;' and I said, 'I am speaking to him about a Packet I left with him when he went abroad.'" Not, you observe, that he says he left it with him in January, 1852. BULPETT turned round and said, "That is a straightforward question, Sir ROGER, what was that?" and the Defendant said, "I do not remember." Then GOSFORD says, "I was asked if I had got it, and I neither said that I had it nor that I had destroyed it, but that I had not got it there." A suggestion was made by the Lord Chief Justice that the two documents are inconsistent. I have put my own views before you, and I again take the liberty of repeating that there is nothing whatever inconsistent in them. It is clear from GOSFORD'S evidence that ROGER TICHBORNE always thought that he had some particular right to Upton different from the right that actually existed, and therefore if this young lady had confided to him that which he did not believe, but which she might have believed, it is not at all unlikely that he would reserve Upton for her.

The LORD CHIEF JUSTICE: My impression is quite the reverse. Mr. GOSFORD does not mean to say that it was a continuing and

abiding belief in the mind of ROGER TICHBORNE that he could do what he liked with Upton before he came into possession.

Dr. KENEALY: I do not recollect a single particle of GOSFORD'S evidence that assumes or asserts the contrary.

The LORD CHIEF JUSTICE: However, I will look to that.

Dr. KENEALY: Then GOSFORD says a clever thing—"It is quite against common sense that I should take Sir EDWARD DOUGHTY'S daughter from her father, and take her to live in her father's own house." Now, in the first place, a Sealed Packet like this would be written in great agitation of mind. Imagine the horror of this young man if he believed that Miss DOUGHTY were in a certain condition. He would be driven nearly out of his senses. ROGER would dread the wrath of Sir E. DOUGHTY and the action which he might take, and he would say, "Have I not some claim upon Upton?" He might have said, "Now, what on earth is to be done? Let her go and live at Upton. You are one of the oldest servants of the Family, and I will trust to you to see she is taken care of." I can easily imagine in such a state of confusion such a thing being said.

The LORD CHIEF JUSTICE: I quite follow your argument, and that ROGER TICHBORNE might have made such a proposal at such a moment; but he says he read it to GOSFORD, and the difficulty is that GOSFORD would have known very well that ROGER had no power to deal with Upton; and, further, how was he to provide for his master's daughter under such circumstances in his own master's house?

Dr. KENEALY: I admit it is a difficulty; but in such a moment of dismay and confusion, Mr. GOSFORD might have thought it could be done. [*His lordship here shook his head significantly.*] Well, my lord, a shake of the head from your lordship is eloquent, but I conceive the possibility of such an emergency overwhelming even a cool-headed man like GOSFORD.

And now, Gentlemen, I must say that I don't like Mr. GOSFORD'S destroying all the envelopes of the letters he got, and I don't like his describing Lady DOUGHTY as keeping ROGER TICHBORNE in a tow-line. Another portion of his evidence I don't like is that in which he describes the visit to Croydon, in a way that contrasts strangely with Lady RADCLIFFE'S own account of the matter. You will remember that he stayed in the village, and did not venture to go up with the rest to the house. I wonder why he stayed in the village? He says it was because he did not wish to see the Defendant any more; but we know that is not the true reason, because he did go to see him afterwards. Again, he not only charges Mr. HOLMES, but also Lady TICHBORNE, with perjury, and has the audacity to say, when asked if ROGER had any twitch, "Not the slightest; no more than I have or you." I say that more audacious swearing than that was never heard in a Court of Justice.

Mr. TAYLOR (Juror): But he added that he had a habit of raising his eyebrows.

Dr. KENEALY: I am coming to that; but he denies the existence of the twitch, which we all know he had.

The LORD CHIEF JUSTICE: I thought you said he had no twitch in the eyes.

Dr. KENEALY: There can be no such thing as a twitch in the eyes; but there was a twitch in the brow, and yet this man says it was clear and smooth as could be.

A JUROR: He distinctly said he had a habit of raising his eyebrows.

Dr. KENEALY: I am coming to that. Don't be so exceedingly impatient. He says he had no twitch; and more audacious swearing, I say, was never heard in any Court. Now, here is another thing which I must ask you to disbelieve as sworn to by this man. It has reference to a letter that was written by "Yours truly, JOHN HOLMES," to Messrs. SLAUGHTER and CULLINGTON, as to a portrait of ROGER CHARLES TICHBORNE with a straw hat. "My Client tells me that he had his likeness taken with such a hat in South America, and that he sent the portrait home with many other things in a box, addressed to Mr. GOSFORD." That is a statement made by the Defendant, a statement which, if true, would be of great consequence, because only the Defendant and ROGER TICHBORNE could know he had sent that box and straw hat to GOSFORD. He says that no portrait whatever came to him from South America, but he afterwards says, by way of saving himself, that he did not mean to say that it was not quite possible that one might have been sent. Do you think that GOSFORD forgets whether there was such a hat sent or not? On the other hand, we have the evidence of Mrs. GOSFORD, that there was a box came from Valparaiso, and I will ask you to believe that her testimony is more likely to be true than that of her husband. These are all the comments I mean to make on the evidence of GOSFORD; and now I beg to call your attention to the evidence of BULPETT, so far as it is relevant to this particular matter of the Miss DOUGHTY business. [Defendant here made a communication to Dr. KENEALY.] The Defendant requests me to call attention to the evidence which has been given by Mr. HAWKINS, to the effect that the bill of lading was sent at the same time. The Defendant makes a very fair request, and that is, that if Mr. HAWKINS makes this statement he should produce the bill of lading. We have had a great many statements made by Mr. HAWKINS here in the nature of evidence, and I am sorry for it. The first observation I wish to make to you with reference to Mr. BULPETT'S testimony is one that will, no doubt, be made by Mr. HAWKINS, namely, that there were other persons present at this interview at the Grosvenor Hotel, and why did I not call WHITE and HINGSTON. The only answer I wish to make to that is that I will call no friend of Mr. HOLMES, and Mr. HAWKINS may make the best of that he can. Can it be that GOSFORD and his advisers guessed pretty well that I should not call HOLMES? or that if I did, I should not get much out of him or his friend LEETE? And did this embolden or encourage him to swear so positively as he did? Mr. BULPETT intimates that at that interview his impression was that GOSFORD did not know which way he was going. He was under the impression that GOSFORD'S mind was unsettled. GOSFORD at that time, you will bear in mind, had had several interviews with the Defendant, and yet his mind was unsettled.

Mr. HAWKINS: The bill of lading referred to was put in evidence.

Dr. KENEALY: Let me see it. (Handed to Dr. KENEALY.) This is for two cases of natural curiosities, &c.; I don't think it throws much light upon this hat. (Laughter.) But to return to GOSFORD. GOSFORD at that time, you will bear in mind, had had several interviews with the Defendant, and yet his mind was unsettled. Mr. BULPETT further says that on the 6th of June he gave an invitation to bring the Defendant and Mr. GOSFORD together, and I submit that if GOSFORD'S mind was not made up it is a matter of great importance.

The LORD CHIEF JUSTICE: Mr. GOSFORD does not say that his mind was not made up.

Dr. KENEALY: No; but Mr. BULPETT does, and I presume he is a person of some credence.

The LORD CHIEF JUSTICE: He only says he thought so.

Dr. KENEALY: GOSFORD, Gentlemen, speaks as if he had been led into a trap by Mr. BULPETT, but the idea is too absurd to require any consideration. As to the Sealed Packet, everything depends on the credence you give these two men. If you believe GOSFORD, I do not conceal from myself that it will be highly injurious to the Defendant. If you believe Mr. BULPETT, *e contra*, it will be very injurious to the Prosecution and favourable to the Defendant.

Mr. Justice LUSH: He did not go there to test him.

Dr. KENEALY: But he was asked to remain substantially to test him, and there was a sort of test examination.

Mr. Justice LUSH: Mr. BULPETT says GOSFORD mentioned the Packet first.

The LORD CHIEF JUSTICE: Then he speaks as if the Defendant mentioned it first, and finally he admits that what he said in the first instance was right.

Dr. KENEALY: I was going to call attention to the three accounts that he gives, and to submit that it is much more likely to have come from the Defendant. Mr. BULPETT says that he mentioned to Mr. GOSFORD that the Defendant was coming to the dinner, and said if he had the slightest objection to meeting him and the gentlemen he would send them all home; and further he said that when HINGSTON and WHITE sent in their cards he repeated that if Mr. GOSFORD objected to see them they should go home. Mr. GOSFORD'S account is that Mr. BULPETT said to him, "Now, sir, ask him some of the questions you asked him before, and he will answer them;" but Mr. BULPETT says he don't remember anything of the sort. Here, therefore, you have Mr. GOSFORD and Mr. BULPETT at issue on that point, and I ask you to believe Mr. BULPETT in preference to GOSFORD. GOSFORD says that he was the first person who alluded to the Sealed Packet. Now I say that if GOSFORD went there to test the Defendant that story is incredible, and that it is much more likely that it was alluded to by the Defendant. But it appears that BULPETT gives three different accounts of who first spoke of the Sealed Packet. When GOSFORD first asked the question the Defendant's answer was, "I do not remember anything about the contents." Then Mr. BULPETT said, "That is a straightforward question, Sir ROGER," but the Defendant replied, "I don't remember anything about the contents." In cross-examination by Mr. HAWKINS, BULPETT says that GOSFORD first mentioned the Sealed Packet, but Mr. HAWKINS said, "Just think a little more." Upon which the Witness does think a little more. And he says, "Oh, no; let me see—I think it came from the Defendant." "Exactly what I thought," said Mr. HAWKINS triumphantly. Well, where are we? I don't know where I am. I am involved in a cloud of mystery about this.

The LORD CHIEF JUSTICE: The last account Mr. BULPETT gives is that the question came from Mr. GOSFORD, upon which I asked, "How do you reconcile that with the Defendant first mentioning it?" and he replied, "I must be wrong there. I think the learned Counsel has put it right."

Dr. KENEALY: But we have Mr. HAWKINS suggesting that it was right—indeed, the whole thing is in a state of confusion. The Witness answers the Counsel, "I think it came from the Defendant;" and Mr. HAWKINS exclaimed, triumphantly, "Exactly what I thought." Mr. BULPETT says "the Defendant put that question almost at the earliest moment;" and Mr. GOSFORD replied, "I do not admit that." No; Mr. GOSFORD came to admit nothing. On that matter, therefore, I ask you to believe Mr. BULPETT and not Mr. GOSFORD. Then again GOSFORD was asked, "Where is the Sealed Packet now?" and he answers, "I have got it amongst my other papers in London." If that is true, it contradicts his other statement that he destroyed it when he went into Wales in 1865. I next invite you to observe from the evidence that GOSFORD was in doubt for some time. At the Grosvenor Hotel arrangements were made for another meeting, and GOS-

FORD was to be there. Why? Because he was still in doubt. He had seen the Defendant three or four times—lengthened interviews—and if GOSFORD was in doubt, I trust you will have doubts as to this Defendant. Mr. BULPETT is asked by Mr. HAWKINS whether GOSFORD did not at the end of the interview say he did not believe the Defendant was ROGER, but that he was evidently an impostor, and Mr. BULPETT denied that any such words were used. They went home together in the same cab and parted on the best of terms, with an arrangement to meet the next day. That is not consistent with the idea that BULPETT led GOSFORD into a trap. It was some time after the examination at the Law Institution that Mr. HOLMES got Mr. BULPETT to put his initials to the document which is now before you. What the object of that was I am unable to understand. I invite your attention to the account given by Mr. BULPETT of this transaction. Mr. HAWKINS and those connected with the Prosecution have raised complaints against the Defendant in this matter, but it may be that he was compelled to this course, on the threat that, if the Defendant did not make a clean breast of it, they would abandon his cause. I ask you to look with the greatest leniency upon the conduct of the Defendant, forced as it was upon him. I now come to the evidence of Mrs. GOSFORD as to this Sealed Packet. She says, as regards it, that she knew before ROGER TICHBORNE left that he had deposited a Sealed Packet. What period of time elapsed? A short time before, she says. That is inconsistent with GOSFORD'S story. Mrs. GOSFORD says that the Packet was deposited two years before ROGER left England, though she afterwards corrects herself by saying it was not so long. Then she said that to the best of her belief it was within a few months after it was written. The only use I make of that is to remind you of it when, by-and-bye, Mr. HAWKINS will ask you to find everything against me on the question of dates. Another thing I complain of is that this lady follows in the track of her husband in saying that there was no particular movement in ROGER TICHBORNE'S eyes. What do you think of that? And yet these are two of the most important Witnesses

PRIESTS AT SANTIAGO.

on Miss KATE DOUGHTY'S Case. This remarkable passage occurs in her letters written to her husband immediately after this interview. She says, "the writing you sent me is very like his signature, perfect. Do have a private interview with him." She underlines the word "do," and she says, "Don't decide it is not him till you are certain. You could easily manage it through old BOGLE." Now, I ask you to say from that that it was in the minds of those two persons at that time that he was ROGER TICHBORNE, but that they thought that it would not be convenient for their interest to admit that it was.

The LORD CHIEF JUSTICE: Is that likely? Can you be really serious?

Dr. KENEALY: My lord, I think it likely, and I am perfectly serious. I have been serious throughout this Trial from the very first.

Gentlemen, as to this Sealed Packet, do not, I beg of you, fix all the blame of the matter upon the Defendant. *He* is not answerable so much as his advisers are. He was in the hands of men who were either traitors to his interests, or utterly reckless as to what they did. *They* have fastened upon him the lock of red hair; *they* have enmeshed him in the Sealed Packet business: both, in my judgment, calculated almost to destroy his Cause. In a moment of weakness or folly—for, like many men, determined in some things, he is feeble, foolish, and irresolute in others, and is a passive instrument in the hands of those around him—he surrendered his own judgment and his better feelings to those persons and committed himself to a disclosure of this affair between himself and his cousin, which he ought to have died rather than divulged. Since then it has been the anguish of his life. But it is done; it is irrevocable. If you are roused to anger, let that anger fall upon the guilty—not upon their instrument and dupe and victim. As to the conduct of the Solicitor-General in this particular, I would rather forbear making any further observation. You know my opinion pretty well by this upon the whole proceedings of that officer, who seems invested in the eyes of some superficial

persons with a sort of judicial authority, and whose acts must therefore be scarcely criticised. This, however, is a wholly mistaken notion. Permit me to remind you of Lord BROUGHAM'S words. "Surely," says that bold advocate in his Speech on the administration of Justice in Ireland, "the most ludicrous of all absurdities is to hold an Attorney-General—a public Prosecutor, a partizan at the Bar, or in the Senate, or on the hustings—exempt from all censure—nay, from all comment—the instant he is removed to the Bench. My whole remarks applied to him while in his lower sphere, in the mere human stage of his existence. He is now removed to that exalted state among the blessed spirits who adorn the Bench; he is above all censure of mine, as long as he falls not from those ethereal regions. But I only referred to the acts of his former state—the things done in the body—when he sojourned among us, clothed with the infirmities of our limited nature, and was amenable, like ourselves, to the bar of public opinion, and could be questioned and blamed without detriment to the sacred purity of the ermine that now clothes him and covers him from all attack."

Gentlemen, Sir JOHN COLERIDGE is now a gilded butterfly soaring high above our heads in the sunshine of the Court: but my allusions to him here refer to him only in his grub or caterpillar state, when he was crawling low upon the earth. But even of Judges, a greater than Lord BROUGHAM, the wise and learned MONTAIGNE says in his Essays:—

"How uprightly soever a Judge may mean, if he does not look well to himself, which few care to do, his inclination to friendship, to relationship, to beauty, or revenge, and not only things of that weight, but even the fortuitous instinct that makes us favour one thing more than another, and that, without reason's permission, puts the choice upon us in two equal subjects; or some shadow of like vanity may insensibly insinuate into his judgment, the recommendation or disfavour of a cause, and make the balance dip."

The LORD CHIEF JUSTICE: Where is that?

Dr. KENEALY: My lord, it is contained in the large octavo edition, which I have already used, at page 263.

Gentlemen, I ask your attention to the evidence of Lady RADCLIFFE herself. I have already mentioned the terms on which she and her Cousin were, and shown that they were apparently looking forward to a time when they would be united by more tender ties. I have called your attention to the remarkable fact of their planting the tree you have heard about on ROGER'S birthday, the satisfaction they always had in each other's company, the exchange of the hair and other things; and none of you can doubt that in that month of January, and until they were so suddenly separated by Sir EDWARD'S conduct they looked forward to marriage as almost certain to take place between them. You must remember the presentation of the locket, and the second exchange of hair, and know that everything went on smoothly until that mysterious occurrence in June; and I must ask you whether you are going to believe Lady RADCLIFFE when she says she and ROGER TICHBORNE were never alone together. I say such a thing is impossible, and that it is asking you to abdicate your common sense to expect you to believe it. It is asking you to stultify yourselves when they expect you to come to the conclusion that two young persons practically engaged to be married should never be alone together. Lady DOUGHTY may not have known anything about it; but I ask each of you to recall the recollections of your early days, and say whether all the mothers in the world could have prevented you from now and again spending five minutes in the company of the young lady of your choice.

The LORD CHIEF JUSTICE: Lady DOUGHTY does not say they were never alone. She says they never went beyond the precincts alone.

Dr. KENEALY: Yes, that is what she says, and I must ask you to exercise your own judgment on her evidence, and especially as to whether it is likely two young lovers should never be alone, out of the ken and observation of everybody, and should never have rolled into HOWLEY'S Plantation or any of the other attractive places in the neighbourhood of the house. The importance of the evidence on this point is this—that if Lady RADCLIFFE is not deceiving us in saying she never was alone with him, Lady RADCLIFFE is not to be believed; *Falsus in uno falsus in omnibus;* and if she is not to be believed on that point, it will considerably weaken the denials she gives with reference to other matters. Then, Gentlemen, Lady RADCLIFFE puts what seems to me a very significant question the first time she sees the Defendant. "I asked him," she says, "where we had last met," and he replied, "at Tichborne, just before I went away, or some words to that effect." Bear in mind, Gentlemen, that she remained outside in the cab for some time, and did not go into the house at Croydon with her husband and Mrs. TOWNLEY. Why did she not go in with them? Was there anything in her mind of the nature of apprehension that he was the real man? If not, I cannot for the life of me understand why she did not go in with her husband and her Cousin. The whole Family had decided this man was an impostor. Lady DOUGHTY had done so without seeing him. Was Lady RADCLIFFE afraid it might possibly turn out he was not an impostor, and was it for this reason she thought it necessary to prepare for her meeting, and not to rush suddenly into the presence of this man who said he was ROGER TICHBORNE? I must ask you to exercise your own judgment on that. To me the question she put to him, coupled with her remaining in the cab, appears most significant. Are we to accept the alternative put to us by Sir JOSEPH RADCLIFFE, that they were determined to play a trick on him by passing Mrs. TOWNLEY off as Lady RADCLIFFE? If you adopt that explanation, I say you ought not to believe them. If you do not adopt it, you must ask yourselves why Lady RADCLIFFE remained outside, and above all things, why the very first question she put to the Defendant on coming into his presence should be one of such significance? No doubt she said it in the same soft tones she sometimes used in that box. "Where did we last meet?" A very significant question, if anything had passed between them such as is alleged; if on the last occasion when they were in company they came through the village together, and she made a communication to him which he did not believe to be true, but which he swears she made to him. Gentlemen, in these simple words, as I read them, there is a volume of ideas and associations. She was touching him, as it were, on his most tender point. If he is ROGER TICHBORNE, and there is any truth in what he says took place between him and that lady, and also as to what he says about that last meeting, I can well imagine the question going to his heart, and disarming him, and making him form the resolution, "I will be torn in pieces by wild horses sooner than disclose anything about it." That, at all events, was the question she put to him. I see a great deal in it, and I invite you to see a great deal in it. GOSFORD says Lady RADCLIFFE came away from that meeting laughing. I invite you to believe that that is untrue. She herself conveys the idea that she had been struck with the similarity in the voice, and we know that when they left an arrangement was made for another interview. Lady RADCLIFFE missed the train on the next occasion, but why she should have missed the train, or why she did not go by the next, has never been explained, and it has always struck me as singular that she should have done so.

The LORD CHIEF JUSTICE: *You did not ask her anything about that, or you might have got a satisfactory answer.*

Dr. KENEALY: I am sorry I did not ask it.

The LORD CHIEF JUSTICE: Then, surely, she should have been asked whether in putting that question to the Defendant she had any such *arrière pensée* as you suggest.

Dr. KENEALY: I yield to your lordship on the first point but not on the second, because I abstained entirely from asking anything as to her relations with ROGER TICHBORNE.

The LORD CHIEF JUSTICE: *Then you have no right to put a guilty construction on a question which may have been innocently put, and which I have always supposed was innocently put, without giving her an opportunity of explaining whether it meant what you imagine or not.*

Dr. KENEALY: If I had, I suppose I should only have got an immediate denial.

Mr. Justice LUSH: It appears to me that the question is one of the last a guilty lady would put in the presence of her husband.

Dr. KENEALY: I submit it was to abjure him to secrecy.

Mr. TAYLOR (Juror): But Mrs. TOWNLEY put the question.

Dr. KENEALY: No, she did not. There is a contradiction between Sir JOSEPH and his wife, but it appears the former is mistaken.

The LORD CHIEF JUSTICE: How easy it would have been to give such an answer as this: "Why, when we were returning from hunting, and I got off and walked with you." That would have implied nothing improper on her part, and would have satisfied her he was ROGER TICHBORNE. He makes no such answer.

Mr. Justice LUSH: His answer was, "At Tichborne, just before I left."

Dr. KENEALY: He does not necessarily mean Tichborne Park.

Mr. Justice LUSH: She asks who were staying at Tichborne at the time, and appears to have understood it was the house that was meant.

Dr. KENEALY: Well, Gentlemen, you have heard what I have said and what their lordships have said, and I suppose you will come to the conclusion that I am wrong.

The LORD CHIEF JUSTICE: I want to hear what you say in answer.

Dr. KENEALY: The answer is that I determinedly abstained from asking the lady anything about the matter, because I could only expect one answer; and one does not like to ask a Witness to go on adding denial to denial. GOSFORD says Lady RADCLIFFE came away from that interview laughing. She says she did not. She had an impression that the voice was like ROGER'S and she had arranged to see him again; so she is not likely to have gone away laughing. Again, she is asked by me, "Did he ever make any love advances till January, 1852?" and she says he did not. Mr. GOSFORD directly contradicts her. And here, also, I must ask you to believe that he is speaking untruth. I now call your attention to the evidence of Lady DOUGHTY. She says her daughter and ROGER were never alone to her knowledge; but you can draw your own conclusions as to whether they might not have been often together without her knowledge. So also might they be often together without the knowledge of Mrs. NANGLE.

The LORD CHIEF JUSTICE: She only speaks of the two days they were on a visit to Lady DOUGHTY in 1852.

Dr. KENEALY: I presumed the Jury would know I only referred to that. Here, Gentlemen, we are in the land of equivocation, and I think it is important to observe that Mrs. NANGLE, when asked as to her recollection, says she can see ROGER before

her. Of course, if this is the man, she would see him before her.

The LORD CHIEF JUSTICE: Do you suppose that is what she meant to say? (Laughter.)

Dr. KENEALY: I mean it is true swearing. There is such a thing as mental reservation. I do not know whether there was anything of that kind here.

Mr. Justice LUSH: Immediately afterwards she says, "That is not he." (A laugh.)

Dr. KENEALY: I don't find that.

Mr. Justice LUSH: Do you mean she did not say he was not ROGER TICHBORNE?

Dr. KENEALY: Excuse me, my lord, I don't find her denying it.

Mr. Justice LUSH: Oh, yes. I have given her exact words.

Dr. KENEALY: I will read her evidence. (The learned counsel did so, and caused a laugh by accidentally making her speak of him as 8ft. 9in. in height.)

Mr. Justice LUSH: She solemnly swears he is not ROGER TICHBORNE.

Dr. KENEALY: That must be on the second day.

Mr. Justice LUSH: No, on the same day.

Dr. KENEALY: I don't find it. Miss NANGLE, Gentlemen, is the next Witness. She says that during the two days spoken to by her mother Miss DOUGHTY and she were constantly together, and Miss DOUGHTY was never alone with ROGER—as if the two Cousins could never find themselves in a room together without Miss NANGLE. That finishes the evidence as to the Sealed Packet, with the exception of the rebutting testimony of Lady RADCLIFFE and the eight or ten other persons who were called to contradict specific things, and that I cannot of course go into to-day.

The LORD CHIEF JUSTICE: *When, then, do you propose to finish?*

Dr. KENEALY: The rebutting evidence should not, I think, occupy me more than till luncheon time to-morrow, and then your lordships will allow me a few closing observations.

The LORD CHIEF JUSTICE: I presume you will finish to-morrow?

Dr. KENEALY: I hope so. I hope you do not consider I have wasted five minutes to-day.

The LORD CHIEF JUSTICE: Oh, no.

Dr. KENEALY: Perhaps it would not be fair to call on Mr. HAWKINS till Thursday morning.

Mr. HAWKINS: It would be hardly worth while for me to begin for an hour or two.

The LORD CHIEF JUSTICE: Very well, we will understand that you will commence on Thursday morning.

[The Court adjourned at four o'clock.]

ONE HUNDRED AND FIFTY-EIGHTH DAY.——WEDNESDAY, JANUARY 14th, 1874.

CONCLUSION OF DR. KENEALY'S SUMMING-UP FOR THE DEFENCE.

Dr. KENEALY resumed his address to the Jury. He said: May it please your lordship, Gentlemen of the Jury—Before I call your attention to the cross-examination of the Defendant upon this matter of Miss DOUGHTY, allow me to remind you under what circumstances he came to be cross-examined. I ask you to contrast the knowledge which he undoubtedly must have possessed at that time with the ignorance, as I call it—the apparent and designed and intentional ignorance—he manifested. It has been made a great point of by the Prosecution that when he was cross-examined he was unable to make anything like a satisfactory answer. I say he must have known then as much as we all know at this moment, and that the answers he gave were evasive, Jesuitical, and equivocating—the object being to shield the character of Lady RADCLIFFE. When he was cross-examined he had been for a considerable period in England. If he was an impostor he must have known from the confession that his dear and faithful friend, J. HOLMES, compelled him to make in 1868 that it would be impossible for him to avoid being examined as to that which he had committed to writing. He had had the advantage of constant personal communication and most affectionate relationship between himself and Lady TICHBORNE, who must have possessed a vast amount of knowledge as to the exact position in which the Cousins stood. That subject must have been over and over again discussed between them. If he were an impostor it would have been his cue to get from her all the information he could procure. Then, again, Miss BRAINE, at the request of Mrs. LUSHINGTON, lived in his house for a considerable time, and must have known what passed between them down to 1850, and to a later period, as she had extraordinary means of acquiring information, not only of Miss DOUGHTY's antecedents, but, if I may say so, of her postcedents also. Then there was Mr. BIDDULPH, his Cousin, and the godfather of one of his children, who knew all the relationship which subsisted between the Cousins. There were also the two Jesuits, Fathers GUY and Mr. MERRICK, who were in frequent communication with the Defendant, and from whom he might have learned a good deal. Again, there was BOGLE, the old and confidential servant of the family, who knew all about those unhappy disputes of June and July, 1852, to whom it is more than probable Sir EDWARD DOUGHTY would have opened his mind;—who knew the secrets of the family, and who was living in the Defendant's house. What was there he could not have learned on this subject from BOGLE? But it does not end there. For twelve or eighteen months the Defendant lived at Alresford amongst the tenants and old retainers of the Family. His first effort, his chief business, if he were an impostor would be to obtain all the information he could as to the doings of the Cousins in former days. From all these sources he could have obtained volumes of information. No one could be more favourably circumstanced in view of cross-examination than the Defendant was. Let us see whether his conduct is not consistent with that which I aver existed—a desire and determination to avoid and evade the subject, with a view to save the character of his Cousin. He is asked when he first became aware that his attentions to Miss DOUGHTY were unacceptable to the DOUGHTY family, and he at once resorts to evasion. "That is a very hard thing for me to say." Why, BOGLE could have told him if he did not know. But, in addition to the motive I have suggested, you will remember the condition in which the Defendant was at the time, as is shown by the medical certificates, and the spirit and temper he evinced when asked to disclose that which he so ardently desired to hide. It may be retorted on me that he is not a truth-teller. I cannot help that. I have never put him forward as a model of veracity. I put him before you as ROGER TICHBORNE, who led a wild career, and who had been badly brought up among the Stonyhurst practitioners,* and with an utter disregard of truth.

The LORD CHIEF JUSTICE: But the part of the cross-examination you are now referring to does not refer to the alleged seduction.

Dr. KENEALY: It is the beginning of it, my lord.

The LORD CHIEF JUSTICE: He might have answered truthfully and frankly, without compromising anyone.

Dr. KENEALY: He knew what was coming, and resorted to a system of shifting evasion and prevarication to avoid, if possible, that which he feared might come of the examination. Doubtless he has done himself the greatest damage by the course he took, as it led people to believe that his refusing to answer arose from ignorance. First of all he said it was in the latter part of 1852 he knew his attentions were unacceptable. Then he said it was about July, 1852. It may be a solution of these answers that he was in a mist and cloud, and was not legally responsible for what he said. I am willing to accept either solution which is most against myself—either that, or that he was evading and equivocating. He talks of the latter end of 1852, and then of July, 1852; but he must have known from BOGLE that he was not at Tichborne after June, 1852. He was evidently beating about the bush, and would not answer—anxious as he was to avoid that fatal month of June. Again he is pressed; and I conceive the state of mind he was in when he said, "I call July the latter end of the year." Did he know, or did he care about what he said? I put it on both grounds. When asked again "Was it July?" he said, "I am in a perfect confusion and do not know." Why, there was nothing to confuse him. The questions were plain. My solution of it is that the aim and object of it were to fence off the questions in the hope of saving the lady's reputation. Pressed still further, he said it was about July or August. "That you swear?" said the Solicitor-General. "I did not say anything about swearing," was the reply. He must have known that he was on his oath. Was this evasion, or was it confusion? I do not care which you decide it was. At length the Court took the matter up, and the Defendant replied, "It was well known for a long time," and there the truth slipped out. "Were they ordinary attentions you paid her?" asked the judge. "Ordinary attentions, I suppose," was the reply; when he must have known that the entire Court knew that they were not ordinary attentions. Here is evasion again, or cloud and fog, and the latter may be the true solution, for my case is that everything about this man is more or less involved in fog and mystery. A little lower down the answer is forced upon him, "What might have been known to ourselves privately was not known outwardly to the world." There is a great deal in that, Gentlemen. He has an inkling that the Solicitor-General would endeavour to extort from him before the whole world that which he was so anxious to conceal. "Privately," said he. "There is nothing

* TICHBORNE'S own opinion of Stonyhurst may be cited here It is taken from a letter addressed to Lady DOUGHTY, under date April 13, 1850: "I was very happy to learn that my father had brought my brother over to England to put him to school. He is quite old enough to be placed in a college. I was very glad to learn at the same time that he was going to Downside *he will be much better there than at Stonyhurst.*"

private. Miss DOUGHTY is here." What a terrible position for this man to be placed in. There sat Miss DOUGHTY—then Mrs. RADCLIFFE—before him. Imagine a man with the feelings of a sensitive gentleman being forced and compelled to proclaim publicly before the whole world the relations which existed between himself and his Cousin. "Did you cease to pay attentions to Miss DOUGHTY?" asked the Solicitor-General. "No," was the reply; "I think it was the other way." That was simply the answer of a maniac, and may give you an idea of the state of mind of this unfortunate man when he was put under the rack in this way. "Do you mean to say she broke it off?" "Yes, I believe it was," is the reply; and that was not wholly incorrect, for you remember the passage in Lady DOUGHTY'S letter, in which she said she had discovered that her daughter's feelings were such that she could not encourage the hope of a matrimonial alliance. Only the real man could have given that answer. Asked whether he wrote to Miss DOUGHTY afterwards, he said, "I believe I did," and we know he wrote his confessions to her, as they were called. But pressed as to whether he further corresponded with her, he said he did; and that was not the fact, as we know he parted with her under circumstances which rendered correspondence impossible. "Why was the engagement broken off?" asked the Solicitor-General, to which the evasive answer was, "I have given you my answer. If you keep me here all night you will get no other." Why, if he were an impostor would he not have known it was of the last importance to have had himself coached as to the grand and vital part of the Case? He was coached, or he was not. If he was, why does he hold back the answers with this iron determination? But he was not, and we find him, when forced to tell how it had occurred, replying according to the fact—now before you in writing. "The objection was that we were first Cousins." The Solicitor-General then intimated that that was the only cause, and I say it is grossly wrong for Counsel to suggest that which is not true; but the Defendant rejected the insinuation, and said it was one cause. He stated, in reply to further questions, that he again visited Tichborne, which he did not, but he was evidently confusing the rupture of January with the great rupture of the following June. "Did you visit with the sanction of Sir EDWARD or Lady DOUGHTY?" and he replied, "Well, I do not know so much about that." That again was the answer of a maniac, if, indeed, he did not allude to clandestine visits to the neighbourhood.

The LORD CHIEF JUSTICE: He is speaking of actual visits. What is the necessity of supposing anything surreptitious or clandestine?

Dr. KENEALY: I suppose we are to read it as it appears. I wish the matter had been made clearer. If this man was compassing a clandestine interview with Miss DOUGHTY, he was just the man to put his correspondents off their guard.

The LORD CHIEF JUSTICE: But the question evidently refers to Tichborne House.

Dr. KENEALY: Yes, my lord, if we are to read it against the Defendant. That may have been in the mind of the Solicitor-General; but I speak of what was in the mind of the Defendant in replying. Further on he said, "I did not visit. When I went to the neighbourhood I put up at Winchester."

The LORD CHIEF JUSTICE: We know he did not stay at Winchester.

Dr. KENEALY: "Put up" is what he says.

The LORD CHIEF JUSTICE: He merely passed through on his way to Poole.

Dr. KENEALY: He may refer to staying for a while at the refreshment room, where he met Lady DOUGHTY.

The LORD CHIEF JUSTICE: He came in by one train and left by the next. That cannot be called staying there. We see by his letters that he only once put up at Winchester, and the dates he mentions are important.

Dr. KENEALY: I do not place reliance on his dates, my lord. If he was endeavouring to bring about private and clandestine interviews he would not put true dates.

The LORD CHIEF JUSTICE: When you say that, you provoke the observation that the Witnesses have described him as a man of honour and truth. Clandestinity is one thing, and falsehood another.

Dr. KENEALY: Is not clandestinity only another word for falsehood?

The LORD CHIEF JUSTICE: No, a man has a right to conceal things which relate to himself; but it is a very different matter to tell lies.

Dr. KENEALY: I may look upon these matters more rigidly than others, but I regard clandestinity as a species of falsehood, for where there is nothing to be ashamed of there is nothing to conceal. Then there is an answer which, I say, shows great knowledge. He says that when he was invited to Tichborne he thought that Lady and Miss DOUGHTY were at Wardour. What a remarkable answer! There is a letter of Lady DOUGHTY telling him as he was coming to visit Sir EDWARD she and her daughter would go to Wardour Castle. We know that all Lady DOUGHTY'S letters were in Court, and I ask you how the Defendant could have known of it unless he was the real ROGER TICHBORNE? and that fact—for fact it is—proves conclusively that he is ROGER TICHBORNE. "I believe I went there," he said further on, "but I do not think I dined there." Here he was evidently wandering. What would have brought him there if he did not dine there and stay over the night? There was nowhere else for him to go. All this is a blank, or an apparent blank—or it must have arisen from a diseased and confused mind—because, as I have said, if he were an impostor, he had had ample means of obtaining information on this vitally important subject. He was either in a maze, lost, wandering, confused, without idea or memory, or he was endeavouring to avoid answering the questions. Then the Defendant appealed to the Court, "My lord, I am very weak, and do not understand the words put to me;" and the Lord Chief Justice said, "You are weak and you do not understand the words"—adopting the Defendant's statement.

The LORD CHIEF JUSTICE: Was not that put interrogatively? I read it so.

Dr. KENEALY: Does your lordship think it was put sarcastically?

The LORD CHIEF JUSTICE: No. But as a question; for the learned Chief Justice adds, "The questions are plain enough."

Dr. KENEALY: The Defendant said that, in his then condition, he could not do justice to himself, and the Court adjourned. The reporter puts after the Judge's words a note of interrogation, but whether the Lord Chief Justice asked a question or stated a fact I do not know.

The LORD CHIEF JUSTICE: Taking the whole passage, I think it must have been a question.

Dr. KENEALY: Very good, my lord. When the examination on the subject was resumed, the Defendant stated that, after all the years that had elapsed, he had no clear recollection of what had passed between himself and Miss DOUGHTY at parting. Was that want of memory, or was it evasion? An impostor would have been ready with his answer as to the Sealed Packet, all about which the Defendant knew perfectly, but he desired and struggled to avoid that disclosure. At last he says, "Well, to the best of my recollection it was only a conversation about my Uncle." Well that, you know, is rubbish. Miss DOUGHTY, no doubt, might have said, "I think I am in such and such a condition—what is to become of me? What am I to say to my Father?" But to suppose that they talked about his Uncle generally is rubbish. Pressed again and again to reply, he said, "I told her it was impossible that we could marry after what my Aunt and Uncle had said to me," and that was consistent with what Lady DOUGHTY had written—that, owing to the state of her daughter's affections, she could hold out no hope of a matrimonial alliance. Does that refer to what had passed in November or to something else?

The LORD CHIEF JUSTICE: But do you think that if her fear and apprehension proved true as to her then condition he would have told her it was impossible he could marry her?

Dr. KENEALY: The Defendant always said he did not believe her.

The LORD CHIEF JUSTICE: He states that he said he would not marry her even if it had turned out to be true.

Dr. KENEALY: May he not have said, "I hear from your Father and Mother that your affections are unfixed, and we cannot, therefore, marry"?

The LORD CHIEF JUSTICE: If what is alleged had taken place, would she have concurred in that view?

Dr. KENEALY: I do not know, my lord, what the lady would say, I am sure. But how could an impostor know the contents of a letter which he had never seen? "Where was this?" he was asked.—"At Tichborne." "In the house or out of it?"—"In the lower end of the village. I know I had just come from hunting." This was in November, 1852, and we know that Mrs. GREENWOOD stated he was hunting in the neighbourhood in that month, although she did not know he had gone to Tichborne. It is, at all events, within the range of probability that ROGER did go to Tichborne and see Miss DOUGHTY in the village. If anything had passed between them on or about the 22nd of June, it would lead him to suppose that his Cousin would be anxious to see him. I can hardly imagine anything more likely than that meeting. How, I ask, could an impostor know, according to the fact that ROGER TICHBORNE was hunting there in November, 1852? Who could possibly have recollected casually seeing him once twenty-one years ago in the hunting field?

The LORD CHIEF JUSTICE: *You ask a question.* CARTER *might have told him of it.*

Dr. KENEALY: Well, he might. Of course, all those "mights" may have happened. The Jury are perpetually told this.

The LORD CHIEF JUSTICE: I do not at all say that he did.

Dr. KENEALY: No! your lordship does not say so. The cross-examination, Gentlemen, proceeded, and at length the Defendant found himself driven into a corner, and he said, "These are matters which I am most reluctant to state in public court. If I do so it will be because I am compelled to do so by the Solicitor-General." The Solicitor-General at once told him he must tell all. Subsequently he corrected his evidence as to Miss DOUGHTY having broken off the engagement, or discontinued the attentions, and said that what he meant to have stated was that it was he who broke the engagement off by his Father's commands. He then again spoke of Lady DOUGHTY having gone to Wardour to avoid meeting him—a fact which an impostor had no possible means of ascertaining. "If you would like," writes Lady DOUGHTY, "to see your Uncle, he desires me to say that he and ALFRED will have much pleasure in seeing you if you come here next Tuesday morning, and remain until Friday morning—and will you kindly then leave? We (Miss DOUGHTY and herself) shall be at Wardour, and it is better at present, much as I should

have wished to see you, it should not be. If you will enter into this arrangement come." Who could have known of the existence of that letter? The Defendant never saw it, because, after the supposed drowning of ROGER, it was handed over to GOSFORD. Well, Gentlemen, Lord Chief Justice BOVILL pressed the Defendant as to whether there had been an actual engagement between himself and Miss DOUGHTY, and he said, "There was, but it never was known to Sir EDWARD DOUGHTY," and we know that Sir EDWARD did not hear till long after of that document of June which was given to Miss DOUGHTY.

The LORD CHIEF JUSTICE: Was that an engagement?

Dr. KENEALY: I think so.

The LORD CHIEF JUSTICE: Oh dear no; it was a vow to build a church, but there was no alteration in the state of affairs.

Dr. KENEALY: ROGER regarded it as such, and the mind of the Defendant was fixed on the document, which clearly contemplated marriage within three years from its date. No impostor could have given that true answer. He would have had no means of ascertaining the fact. I can readily imagine an explosion of rage on the part of Sir EDWARD DOUGHTY if he had known of it in June, 1852.

The LORD CHIEF JUSTICE: There is nothing to show that her Father was angry about it. I do not know what there was to be angry about. Remember, he had given a conditional assent—a reluctant assent, I am willing to believe—to the marriage taking place in three years, and said it would then be the will of GOD.

Dr. KENEALY: He would certainly have been very angry. We know that he was a man of hot temper.

The LORD CHIEF JUSTICE: We know Sir JAMES was. On two occasions only was there any indication of anger on the part of Sir EDWARD. Besides there was nothing in the document—a vow to build a church—which was inconsistent with honour and decency.

Dr. KENEALY: ROGER speaks in his letters of the meetings of his Father and Uncle as if inflammable materials would come together.

The LORD CHIEF JUSTICE: What was there that was inconsistent with honourable feeling?

Dr. KENEALY: I do not say there was anything, but we know that Sir EDWARD was a very hasty man.

The LORD CHIEF JUSTICE: There is very little evidence to show that. The refusal of Sir EDWARD to receive Mrs. TICHBORNE in his house caused a disagreement of rather a serious character between the brothers, and caused a temporary alienation, but such things are not unfrequent.

Dr. KENEALY: Well, I may be wrong, but the impression on my mind is, that Sir EDWARD and his Brother were persons of a high temper. I thought there was a passage in one of ROGER TICHBORNE'S letters in which he expressed apprehension as to the meeting of the two brothers.

The LORD CHIEF JUSTICE: When writing to his Cousin as to his last interview with his Uncle, there is not the slightest reference to anger.

Dr. KENEALY: It is hardly likely in writing to the daughter he would reflect on the temper of the father. Gentlemen, the Defendant was asked whether he had not got information from BOGLE, and he said that the question was an insolent insinuation. Imagine ORTON, from Wapping, calling her Majesty's Solicitor-General an insolent fellow! The thing is incredible. Then came an extraordinary question, "Was it on the last day you were at Tichborne you saw your Cousin?" and he replied, "It was when I was hunting there." How did the Solicitor-General know that ROGER had seen his Cousin on the day he was hunting in the neighbourhood? Surely someone must have told him the fact, and that it was ROGER'S last visit. Then he said, "Walking through the village, you say you made her a promise—what was it?"—"That if she were single on my return I would marry her." "Did the DOUGHTYS know that you were going to stay abroad for an indefinite time?"—"I do not know that they knew it." "Whom did you tell?"—"I think GOSFORD." That was true, as we know from the letters—letters that never were seen by the Defendant, as they passed into GOSFORD'S possession in 1855, and it was, therefore, a thing of which an impostor could know nothing whatever. He is then asked: "Have you any doubt on earth that you told Sir EDWARD or Lady DOUGHTY?"—"I never told any of them." This is a very remarkable statement on his part, Gentlemen, and I hope it will make a due impression upon your minds. It is singular, also, that he does not in any letter of his extant, say anything to either Sir EDWARD or Lady DOUGHTY of the intention he expressed to GOSFORD to stay for a long period in India. On the subject of the Sealed Packet, he is asked whether he drew up anything, and he answers in the affirmative. The question is then put: "Under his (GOSFORD'S) instruction?"—"No. I wrote the paper, read it over to him, and sealed it up.' Gentlemen, if the Packet contained only a promise to build a church, it required no sealing up. Further on in the cross-examination he says that this took place in November, that he did not write the document at the dictation of any one, and that after he had written, read, and sealed up the Packet, he gave it to GOSFORD. Then comes the allusion to "private wishes and intentions," which I ask you to believe is entirely distinct from the Sealed Packet. He says he does not recollect keeping any copy of the document which refers to his wishes and intentions, which, he states were written on two sheets of paper, and signed once. His attention is then called to the conversation he had with GOSFORD on the subject, and he is asked whether that gentleman reminded him that ROGER TICHBORNE had left a Sealed Packet behind him, and he answered, "No. He asked me if I remembered leaving anything with him, and I said, a Sealed Packet." Mr. GOSFORD is a very wary man, you know, Gentlemen, and was not at all likely to have blurted out at the 'Grosvenor' that ROGER TICHBORNE had left a Sealed Packet with him. The way the Defendant puts it is far more reasonable, I submit. He then goes on to say that he heard GOSFORD in the Court of Chancery first swear that he destroyed the Packet in 1854, and afterwards swear most positively that it was in 1849. The first date must be a misprint, for no doubt he said 1854. The Defendant says that GOSFORD hesitated considerably before he answered the question concerning the destruction of the Packet. Several questions on metaphysical subjects are then put to my Client, but these I will not trouble you with. But after he had been sufficiently entangled in a load of subtleties of that nature the grand question is put, "What is the event you hoped had not happened?" and he replies, "The confinement of Miss DOUGHTY." Then the cross-examination goes on:

"Do you mean to swear that you had seduced this young lady?—Yes.

"When and where?—It was not long after I came from Ireland.

"When?—About the month of July or August.

"What year?—1852.

"Give me some nearer guide than that.—At the latter end of July or the beginning of August.

"Before or after the breaking off of the engagement by Sir EDWARD DOUGHTY?—Before."

He is then asked where the Mill was situated at which he said he seduced his Cousin, and whether it was a seduction or an attempt at seduction; I don't care——

The LORD CHIEF JUSTICE: He says it was a seduction.

Dr. KENEALY: Well, he may have thought so.

The LORD CHIEF JUSTICE (*very significantly*): Is that a thing a man can be mistaken about?

Dr. KENEALY: I don't know. He says the Mill was some distance from Tichborne; that the seduction took place about four o'clock in the afternoon, though on what day of the week he could not say; that he was staying at Tichborne at the time; and that it was probably a week or ten days before the engagement was broken off. The cross-examination goes on:—

"You can't remember to a day?—No, I cannot.

"Do you mean to say you left your cousin with child?—No; I don't say so.

"You told me you never saw her in Tichborne after that?—Yes."

Further on he is asked:—

"She told you she was with child?—Yes.

"Where?—At Tichborne.

"Were you staying in the house at the time?—No; I was not.

"Where did you meet her?—I met her in the village. It was told me when I met her in the village, to the best of my belief.

"Will you swear it?—Yes; I will."

Gentlemen, you will remember what took place previous to the Defendant's saying distinctly what he did. He was asked:—

"What is the event which you hope has not happened?—That, as I mentioned before, I have great reluctance to state. If called upon to do so by the Solicitor-General, however, it must be upon his own head and in his own hands whatever I say. I have written a statement for my Counsel, and I have no objection to its being shown to you and to the Judge and Jury."

That statement was not read, however. I think justice would have been as well satisfied if the course suggested by the Defendant had been adopted, instead of letting the matter come before the whole world; but that, it seemed, would not do for the Prosecution, who were determined to do all they could to make this man odious and unpopular by bringing out that which he was prepared to confine to the knowledge of the Counsel and the Judge and Jury. Then the cross-examination proceeds:—

"Did you leave this country in the month of March, 1853, uncertain as to whether your young Cousin, whom you say you had seduced, was about to have child?—I never believed she was in fact."

A great deal has been said about the wickedness of this young man seducing his Cousin, and abandoning her when she was about to have a child, and if he did so that was conduct than which I can conceive nothing more detestable. But here you see he says he did not believe she was in the family-way. He says further on that he does not believe he made any direct inquiries into the matter, although he has no doubt he spoke to GOSFORD about it. He is under the impression, then, that he did make inquiries. Let us believe him. Let us believe that a man who had been guilty of such an act as the seduction of his Cousin would not be so infamous as to leave the country without making inquiries concerning her condition.

The LORD CHIEF JUSTICE: I may as well say now, although I shall allude to the matter hereafter, that it had always struck me the Defendant was in this dilemma—either he did make inquiries or he did not. If he did not, then, as you say, his conduct was infamous—infamous in the extreme; but if he did make inquiries, and was told that there was not the slightest appearance of anything of the sort, why did he not ask to have the Sealed

Packet returned in order that it might not be left to the chance of its turning up to the dishonour and shame of his Cousin?

Dr. KENEALY: I can give no answer to that. I cannot answer for a thousand things this man has done. That is what any man of ordinary sense or ordinary feeling would have done.

The LORD CHIEF JUSTICE: I thought it fair to mention the matter. I shall have to refer to it hereafter.

Dr. KENEALY: I am much obliged to your lordship for telling me that you will hereafter refer to this matter, although I am obliged to confess I cannot explain it. Now, Gentlemen, this is the whole of the examination and cross-examination of this Defendant upon which I mean to offer any comment; and I shall in conclusion address to you one or two observations upon that, and then come to the evidence of those persons who speak to having seen ROGER TICHBORNE and his Cousin walking together alone. I have already called your attention to the relations that existed between these parties in the month of June, that the marriage was simply one that was deferred, and that Sir EDWARD DOUGHTY had exhibited extraordinary fickleness of purpose between January and February; in the first-mentioned month being opposed to it, and in February giving his sanction. These young persons under these circumstances might naturally have anticipated that before long Sir EDWARD would yield a little way, and then that their union would be solemnized before the lapse of three years. Bear in mind what ROGER TICHBORNE was at that time. He had been brought up by JOLLIVET, a French tutor, probably about the worst tutor an English boy could have, and brought up by him, according to Mrs. NANGLE, in billiard-rooms and cafés in Paris, for three years and a half. Only conceive the corruption of mind that must have been infused into him by such a training as that! It is something horrible to think of. Hardly anyone could have resisted the corruption—nay, almost the entire destruction—of his moral principles with such an education as that. Whether it was at that time he imbibed the desire for drink to which he afterwards surrendered himself a slave, I know not. He probably then first began the perusal of those licentious novels at the suggestion of JOLLIVET; for a man who was base and wicked enough to lead him into billiard rooms and cafés would not hesitate to encourage his reading licentious literature, and probably that is why that person is not called by the Prosecution. And a man who would encourage such a thing would instil any amount of corruption into his mind. ROGER then goes to Stonyhurst with his library of abominable books, and he there gets into the company of such a man as Lord BELLEW, and he may be said to have been surrounded by an atmosphere of equivocation, scheming, and falsehood. He passes some portion of his time in debauchery at Preston, goes on to Ireland, where he continues his habits of drinking, has a serious illness, goes to Canterbury, and there follows in the same line of conduct as that which characterised him elsewhere. I submit to you that he was a man whose mind and body were utterly debauched—just the very man to make an attempt on the honour of his Cousin or that of any young lady who had the misfortune to fall into his company. We know the kind of conversation and conduct which goes on in mess-rooms. Everything helped to destroy this young man's morals; therefore you must take that into consideration when you are asked to say what may have taken place between him and his Cousin. Well, now about this seduction. He says it was a seduction; but, Gentlemen, there are seductions and seductions. If a man wilfully and intentionally, by a long series of arts and designs, corrupts a young woman's mind for the purpose of debauching her person, and without the intention of afterwards making honourable amends to her, I cannot conceive a more abominable crime; but if these two young persons, engaged to each other, in the heat of excitement or passion, in the revolution of a minute, give way to their desires, to call that a seduction would be an abuse of language. Don't suppose for one moment I am palliating any infringement of morality on the part of the man, or excusing any lapse of virtue on the female side. The honour of women is essential to society; therefore I don't wish it to be supposed that I am in the least degree palliating such a thing. But I am calling your attention to the wide and almost impassable gulf which exists between the two seductions—one being of the deepest die of atrocity, and the other what would be called in the casuistry of Stonyhurst a venial offence, and one which could be set right almost immediately by the marriage of the two persons. Could this seduction have happened or could it have been attempted? The Defendant says it was in the month of June, and the author of "DON JUAN" speaks of June being rather a fatal month under such circumstances. They were looking forward to marriage, and probably if Sir EDWARD had felt the immediate approach of death he would be expected to say of himself, "Well, I should like to see my daughter married and settled before I pass away from existence. I thought I should live these three years out, but I can perceive the termination of my life is approaching, and I will have them married." Was that an unreasonable thing to suggest itself to their minds? I say not. The seduction might have happened in one of the rooms at Tichborne or in the grotto.

The LORD CHIEF JUSTICE: He said the mill.

Dr. KENEALY: That means the grotto.

The LORD CHIEF JUSTICE: The mill means the grotto?

Dr. KENEALY: Yes.

The LORD CHIEF JUSTICE: If such a thing took place "at the mill," I should think it would be in the mill.

Dr. KENEALY: It was situated at a picturesque part of the river.

The LORD CHIEF JUSTICE: You have seen the grotto, Dr. KENEALY?

Dr. KENEALY: I have.

The LORD CHIEF JUSTICE: And so have I.

Mr. Justice LUSH: And so have I. (A Laugh.)

Mr. TAYLOR (Juror): And so have I. (Laughter.)

The LORD CHIEF JUSTICE: Having seen it, I put it to you whether anything could have happened there?

Dr. KENEALY: You did not see it in 1852, my lord.

The LORD CHIEF JUSTICE: No; I saw it in 1873; but I put it to you from what you saw of it whether a seduction is likely to have taken place there?

Dr. KENEALY: If I had seen the grotto in 1852 I should have been able to answer your question.

The LORD CHIEF JUSTICE: I saw what was there in the shape of shrubs and trees.

Dr. KENEALY: But not as it was in 1852.

Mr. Justice LUSH: Above the grotto there is a footpath.

The LORD CHIEF JUSTICE: And there is one between it and the river.

Dr. KENEALY: Your lordship, I say, viewed it as it was in 1852. Further, you saw it in November, or at some such gloomy time. There is a photograph of what it is in the summer.

The LORD CHIEF JUSTICE: *I never was more astonished in my life when I saw the grotto, having already seen the photograph.**

Mr. Justice LUSH: *I could not have supposed a photograph could have so disguised the thing.* (Laughter.)

The LORD CHIEF JUSTICE: *It reflects the highest shame on the man who concocted the photograph.*

Dr. KENEALY: *Your lordship is giving evidence on the matter, and I am sure you do not wish to do that.*

The LORD CHIEF JUSTICE: *I speak of what I saw.*

Dr. KENEALY: *And that is what Witnesses generally do.* I don't take an extraordinary view of these things. I don't care where it took place or where the attempt was made, if it was only an attempt. I have demonstrated to you that something must have happened in June which operated as a barrier to exclude ROGER TICHBORNE from Tichborne Park; and that something must have been of a most grave and terrible nature when a cool practitioner like Mr. GOSFORD, in answer to ROGER'S announcement of his intention to take a house within ten or twelve miles of Tichborne, uses the extraordinary words, "Lady DOUGHTY is horrified at the idea."

Mr. TAYLOR (Juror): Supposing this seduction had happened, how do you arrive at the conclusion that it was known to other persons?

Dr. KENEALY: If you had ever lived in the country, I think you would not ask me that.

The LORD CHIEF JUSTICE: There is this about it—if it took place in the grotto, the probability is it would have been seen by some one.

Dr. KENEALY: I never, from the beginning of this Case, have tied myself down accurately to the dates and descriptions given by the Defendant, because I say if he is judged literally, on the principle *strictissimi juris*, I don't know what will become of him.

THE LORD CHIEF JUSTICE: What will become of Lady RADCLIFFE if he is not tied down to time and place?

Dr. KENEALY: She must know whether she ever walked with ROGER outside Tichborne Park. She says she never did; but I have called a number of Witnesses who have destroyed the evidence; therefore she is not to be——

The LORD CHIEF JUSTICE: Do you say that if two persons take walks like those they must necessarily lead to a seduction?

Dr. KENEALY: I can hardly accept that as serious. How could I mean such a wild thing as that?

The LORD CHIEF JUSTICE: If I understand your argument——

Dr. KENEALY: My argument must have been very badly expressed if it led you to believe what you have just stated, my lord.

The LORD CHIEF JUSTICE: You say "my Client is not tied

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* EVIDENCE FROM THE BENCH.

We copy the following from a London paper of great circulation and ability: "Lord Chief Justice COCKBURN is certainly a universal man, and London is delighted at the knowledge he has been displaying as to the works of PAUL DE KOCK. If our memory serve us well, he showed himself equally erudite a few years ago touching the 'Physiologie du Mariage' of BALZAC, which he defended on the Bench against the charge of immorality. There are not many Judges, even in France, who would care to avow that they had studied the lighter sorts of French literature sufficiently to qualify them as critics; and Sir ALEXANDER COCKBURN deserves a good mark for his frankness. But the affair reminds us of an American Judge who was even franker than his lordship. A Prisoner being charged before him with brawling in a house of doubtful—or rather undoubted—reputation, this Yankee Solomon shouted at first sight of him, 'Three months in the State Prison!' 'But you have not heard the Witnesses for the Defence,' cried the Prisoner's Counsel, rising in considerable astonishment. 'No need of Witnesses,' sang out the Judge; 'I WAS THERE AND SAW IT ALL MYSELF.'"

down to any circumstances of time or place as to the matter in question;" then I say, How is Lady RADCLIFFE to meet the Case unless you do tie yourself down? You say "I could not answer that but for this, that Lady RADCLIFFE has said she never walked with her Cousin outside the park." That is your argument.

Dr. KENEALY: That is what I have asserted. The Defendant makes an assertion; Lady RADCLIFFE swears that it is false. But if Lady RADCLIFFE falsely denies those meetings and by-walks with ROGER, then she is not to be believed when she denies his assertion. It does not follow that because she walked outside the park that therefore something happened. I say she is not the Witness of truth, because she has given a denial to certain circumstances under which this seduction might have taken place, which circumstances I have proved. Though the Defendant says this happened at the mill, he may have alluded to an attempt there that may have been subsequently carried out in one of the rooms at Tichborne House.

The LORD CHIEF JUSTICE: He has said nothing of the kind. He has said that whatever took place took place at the mill at Sevington.

Dr. KENEALY: Whether it took place at the mill or at Tichborne Park I don't care. All I care about is this—Have we reasonable ground for believing that Lady RADCLIFFE is not telling the truth when she denies these things; and if we have ground for believing that she is not a credible Witness, it ceases to become oath against oath, but the testimony of an incredible Witness against that of a Witness supported by that of others which is not destroyed.

The LORD CHIEF JUSTICE: If departure from truth in a single instance destroys the credibility of a Witness, how can we, in a Case of this importance, accept the statement of a man whom you yourself describe as reckless and indifferent to the truth?

Dr. KENEALY: I said his testimony in the Common Pleas was given in a reckless manner, but the great body of it is true. Your lordship disputed the maxim I quoted the other day, namely, "False in one, false in all."

The LORD CHIEF JUSTICE: I do not dispute it in the case of Lady RADCLIFFE and your Client.

Dr. KENEALY: Lady RADCLIFFE is entirely overborne by other Witnesses about walking outside the limits of the park, therefore she is an incredible Witness. Then here there are two incredible Witnesses to choose from. I will say, How can you believe the one or the other? If you like, believe neither of them if you please, and then how can you come to a verdict? You may say, "Here are two liars, and as we cannot believe either of them, we can come to no verdict." (Laughter.) I say it is impossible for you to believe Lady RADCLIFFE, contradicted as she is, and with all the incentives she must necessarily have to colour her evidence. I was on the question that something which appeared horrible must have occurred at the time that man was staying there. Whether there was flirtation carried to too great an extent, and which was made known to Lady DOUGHTY, I don't know; but bear in mind that no servant has been called from Tichborne to satisfy you that such was not the case.

The LORD CHIEF JUSTICE: I think Lady RADCLIFFE said she never was alone with him out of doors. You have sitting below you, and instructing you, the man who says he did this act, and the man who says he did it must be aware where it was done. He said it was at Cheriton Mill. There was the man to instruct you as to where it was when Lady RADCLIFFE was in the box.

Dr. KENEALY: All quite right. But that is the man who never told me about that important conversation with GIBBES with reference to the malformation till days after it occurred.

The LORD CHIEF JUSTICE: It was for you to ask him.

Dr. KENEALY: I could not have asked him about a malformation of which I had never heard; and morbid feeling seems to have prevented *him* from even hinting it to me.

The LORD CHIEF JUSTICE: I did not mean the malformation, as you call it. I meant the place of the actual seduction.

Dr. KENEALY: You may ask him, but he does not always tell you. I don't feel myself at liberty to tell your lordship here in open Court what I know of this man.

Mr. Justice LUSH: Lady RADCLIFFE says that she never was outside the park with ROGER TICHBORNE alone.

Dr. KENEALY: I suppose I am wrong; but I have a notion that there was a general assertion by Lady RADCLIFFE that it never happened that she was alone with her Cousin. Though I did not ask the question, something may have happened in the house or at the mill, which would reach the ears of Lady DOUGHTY and justify her and her husband in coming to the resolution which they did come to, although she did not, perhaps, do so in the terms which the circumstances demanded. As I have observed to you, it is a strange thing that none of the servants in the house have been called to tell you whether or not they had observed anything at all suspicious about their conduct in the month of June. Whether anything had been conveyed to the mind of Lady DOUGHTY as to the exact position of these two persons no one is called to show. That something had occurred either there or at the mill seems perfectly demonstrated by the facts we know. I call your attention to the evidence of those Witnesses who tell us what they observed at various times outside the house and grounds. The first of them is CHARLES GUY, who saw ROGER TICHBORNE with KATE DOUGHTY in the by-walks and coach roads. He saw them in the private walks, and sometimes somebody was with them, sometimes they were alone together. He has also met them near the Lovers' Seat. CAROLINE SKATES used to see them about. She knew Bransmead Downs. She lived at Mr. TILT'S and let Mr. ROGER and Miss DOUGHTY in often. I again ask why Lady RADCLIFFE denies the fact of her walking alone? Nobody could have seen anything wrong in that. I say she knows it would awaken grave suspicions, and so she denies it. HENRY NOBLE has seen them together in a private walk with a wicket gate at the end of it. It is all a very innocent thing for two Cousins to be walking in a private walk. I find no fault with that. I only find fault with this lady for denying it. JOHN FISHER has seen them riding together alone. Lady RADCLIFFE chooses to deny this, and Miss NANGLE supports her in the denial. MARY ANN BYLES has seen Miss DOUGHTY with ROGER TICHBORNE riding on horseback; once with Mr. TILT and several times without. She saw ROGER planting a stick for Miss DOUGHTY to leap over. She has seen them together in the private paths and in a copse, she believes in October, and then she speaks of ROGER TICHBORNE setting up jumping-sticks for this young lady to leap over. It is rather a queer sport for a young lady. Fancy such amusement in the flowery fields of Tichborne:

"PHYLLIS the fair in the bloom of sixteen,
Felt an innocent warmth as she played on the green."

Surely she could not have forgotten that. THOMAS DYMOTT saw them walking alone five times, and he describes the place. ANDREW BOGLE is the next Witness. He had seen them leaving the front door when he was at Sir EDWARD'S dressing-room window. He had seen them go out alone and come back alone. He says he never saw them riding. Mrs. BURT saw them go into the grotto together, but only the entrance to it could be seen from the house. She says she thinks it was in the autumn, and that the grotto was entirely surrounded and covered with trees. She fixes the time as autumn, because the sun was so low in the horizon.

The LORD CHIEF JUSTICE: ROGER TICHBORNE we know was elsewhere in the autumn of 1852.

Dr. KENEALY: I don't care for the date—the fact is enough for me. (A laugh).) Perhaps it was in June.

The LORD CHIEF JUSTICE: No; she not only mentions the altitude of the sun, but that it was harvest-time, and she thought partridge shooting had commenced.

Dr. KENEALY: If you garotte this Witness to that date there is an end of her. (A laugh.) She may be wrong as to the date, but it is difficult to find any good reason for discrediting the fact. Then she says there were rustic seats in the grotto. [Photograph produced, in which the grotto is surrounded by trees.] I believe this photograph was taken in September, and I suppose ere long you will have Mr. HAWKINS telling you that Mr. ONSLOW employed some gardener to plant a hundred trees there for the purposes of this photograph. (Laughter.)

Mr. TAYLOR (A Juror): Do you recognise the place by the picture?

Dr. KENEALY: I object to any of us giving evidence in a Court of Justice. This Witness says she saw ROGER sitting on a stile in one of these three months. It is for you to say whether she saw them in the grotto.

The LORD CHIEF JUSTICE: It occurred to me that she was making a mistake in the year. We know where ROGER TICHBORNE was by the letters, and that he was at Tichborne in 1849, but not in the autumn of 1852.

Dr. KENEALY: If he was doing anything clandestine, would he let himself be committed to dates? It appears from the evidence that this Witness did not play the spy by watching them in the grotto. MARY JANE WILLIAMS, another Witness, says that she had seen ROGER TICHBORNE and Miss DOUGHTY together, and that they used to ride out together in the latter part of 1851 and the beginning of 1852. BENJAMIN DAWSON is the next. He said, "I have seen him and Miss DOUGHTY walking together on the lawn and in the garden, but I don't recollect having seen them anywhere else." ANN MINES mentions a circumstance which happened when ROGER TICHBORNE and Miss DOUGHTY were galloping along the road. She had seen them together on other occasions, and saw him laying sticks down at the brook for Miss DOUGHTY to walk upon. She knows the stile near the mill, and said she had seen ROGER and Miss DOUGHTY sitting there together alone. This grotto, I should have thought, was inseparably connected with the mill; and Lady RADCLIFFE, although she says she was at the mill, and knows all about it, denies that she knows anything about the grotto. I ask you not to believe that statement. MARIA FRAMPTON saw them together on Tichborne Downs in the summer of 1852 or 1853. She also saw them on the stile. Gentlemen, I think it would be very hard for you to say that all this is untrue; and if you say it is true, what becomes of the evidence of Lady RADCLIFFE? JAMES BURKETT said, "I have seen ROGER TICHBORNE and Miss DOUGHTY walking together along the road to the Cheriton mill." I think it is quite clear that this mill was a favourite resort of these young people. Then he says, "I have also seen them walking alone together outside the park three or four times in the spring of 1852." ANGELINA HOMER saw them coming across the park, and saw him take her by the hand. I now come to what may be considered the final parting

between these lovers as given by CHARLES GUY.* He says: "I saw him go away in a fly from Tichborne House. It was about 11 or 12 weeks before Sir EDWARD died." There was, it appears, some mistake in the date there. In fact, dates are a perfect godsend to the other side; I don't know where they would be if it were not for dates. This Witness speaks to the kissing and crying which occurred on that occasion. It is a significant fact that when Lady RADCLIFFE is recalled she admits the crying, but denies the kissing. I can understand if anything had passed between them, as represented by the Defendant, that a strict disciplinarian like Lady DOUGHTY might allow her daughter to see ROGER leave, but would place an interdict upon her kissing him, although she could not prevent the crying. I called your attention yesterday to a letter written by the Defendant from South America, dated the 29th of June, 1853, in which occurs the following remarkable and significant expression:—"You may rest assured, my dear Aunt, that what has passed between me and my Cousin, though I feel as much attached to her as ever I was, has never been told by me to anybody; and, moreover, never will be spoken by me to any living soul, and that I shall always be happy to do anything in the world I can for her. Postscript.—This letter must be burned when read." Of course it was not burned, because Lady DOUGHTY took good care to keep it, which shows, as I say, an extraordinary state of mind on her part. But these are most remarkable phrases, which I say can only have reference to something which had passed between him and his Cousin which never must be told. Is it to be said that it was their engagement? I suppose I shall be told so; but that is simply nonsense. It admits of only one interpretation. Gentlemen, that ends my comment upon the Miss DOUGHTY matter, and I must ask you to come to the conclusion that there is sufficient evidence in this matter to warrant you in concluding that what has been stated may have happened. Ladies' oaths upon subjects of this nature must, I am afraid, always be received with doubt. We have instances every day in the Divorce Court of ladies of at least equal social position with Lady RADCLIFFE denying upon their oaths adulteries with which they were charged. But Juries there discard sympathy and judge results by the balance of evidence, and not by the particular denials which these females give. Why the Defendant should have invented such a thing as the story of seducing his Cousin I have never been able to guess a reason. There is, indeed, a ghost of a reason put forward—namely, that it was invented for the purpose of frightening Lady RADCLIFFE out of the witness-box. That is a far-fetched idea. According to that theory he ought to have invented other falsehoods to have sent everybody out of that box. The Defendant must have known that a charge of that sort would not only excite universal sympathy for Lady RADCLIFFE and a feeling of condemnation against himself, but would inevitably compel her to go into the box to contradict it. That reason therefore, when examined, fails entirely. Plenty of Witnesses have proved that these two young persons were together under circumstances in which they might, unhappily, have given way to their passion, and carried it beyond due bounds; and I can easily conceive this being followed immediately by the most painful ideas of breach of trust and violation of honour, and that they might seek to atone for it by a vow to build a chapel to the Holy Virgin. That is a course which would naturally occur to the mind of a good Catholic. The ex-Queen of SPAIN, who, we all know, is a pious and zealous Catholic, when she had committed any sin, immediately atoned for it by a pilgrimage to some of the shrines of "Our Lady," and the present of a satin petticoat covered with jewels. (A laugh.) Probably the vow of which we have heard so much was dictated by similar feelings. It is incredible that Lady DOUGHTY should not have learnt something about this dreadful secret. It is difficult to account otherwise for that remarkable series of letters to which I have drawn your attention, in which she addresses such remarkable remonstrances to ROGER TICHBORNE. She must have known that something had gone wrong, and that I most respectfully submit to you is the only explanation that can be given of the Defendant's conduct, and the only explanation which is consistent with the tone and manner of the Defendant.

[The Court then adjourned for lunch, Dr. KENEALY having previously intimated that he would commence his concluding remarks at the end of the adjournment.]

When the Court had reassembled, at two o'clock,

Dr. KENEALY proceeded, in a very low tone of voice, as follows. May it please your lordship and Gentlemen of the Jury: We have now arrived at what I may call the nearly final stage of the most remarkable Trial that has ever occupied the attention of the world. There is no actor in this Trial, from the humblest up to the most exalted, who may not well look with apprehension, and almost with dismay, at the position which he may occupy before his countrymen and the world in future ages. I should be sorry to think that there is any person connected with this great controversy who does not look with a species of pride to maintaining an honest name before the world and posterity. I should be sorry to think that there was one of us who was so dead to the future that he did not sometimes ask himself, with a feeling of solemnity, "How shall I appear in the historical reminiscences of this great Trial?" For my own part, from the first moment when I became connected with it, I knew that it was one in which the names of all engaged in it will be handed down to posterity with honour or with infamy. On a former occasion I took the liberty of calling to your attention the blazon of glory which still surrounds the names of the Jurymen who were connected with the great ANNESLEY Trial, and I am anxious that a similar illumination of splendour should surround not your names only, but also the names of others, in the eyes of those persons who will read this Trial during all ages; because never was there a Trial in England, I believe, since the memorable Trial of CHARLES I., which has excited more the attention and observation of England and of the world than this. Many things have passed in the course of this Trial which I would give a portion of my heart's blood not to have had pass. Many things have occurred in the course of this investigation which, in my judgment, will for ever blur and sully the names of certain individuals—individuals, in whose name and ability many of us were concerned, individuals whose name and ability might have been part of the glory of England.

The LORD CHIEF JUSTICE: Will you speak a little louder, Dr. KENEALY?

Dr. KENEALY: I will speak as loudly as I can, and I hope your lordship will make allowance for me on this the 23rd day of my Speech. Gentlemen, I assure you it is with an effort that I address you. When I came down to this Court I did not intend, nor did I believe I should be able, to add a single observation to my comments upon the evidence: but I thought it was absolutely incumbent upon me to do so. However I might fail in my physical and mental strength, I felt that I ought, at all events, to wind up by a few general observations; and though I hardly think them necessary, nevertheless they may be useful in recalling to you, or reminding you—if it be necessary to remind you—of the great and mighty issues that are here involved—issues not only, as I say, connected with the Prosecution and with the Defendant but also with every one of us. It is impossible for me to describe to you the terrible sense of responsibility under which I have laboured for so many months; and I assure you that the immense amount of mental strain under which I am labouring, and have been labouring for a considerable time, I never could indicate. I feel, Gentlemen, that I have addressed you too long, and that probably through that mental strain I have brought a great many things before you over and over again which I ought not to have brought before you, and which, under ordinary circumstances, I should not. But I feel also that at the hands of the Jury which I have the honour of addressing, I have received as great an amount of indulgence and kindly sympathy and consideration as any Counsel ever received from an English Jury, and this I can never forget. Gentlemen, in you at this present moment I consider is deposited, in a great measure, the honour of our English system of jurisprudence, and the dignity of justice itself. It would be idle for any one of us to disguise from ourselves the fact that the eyes of the world are directed to this Court and the termination of this issue. As far back as we have any records of judicial history the pride and glory of Englishmen has been their system of Trial by Jury. I take the liberty of saying that Trial by Jury is now upon its Trial; and I also take the liberty of adding that by the verdict which you may give in this Case you will sustain or weaken the respect which our fellow-countrymen have always felt for Trial by Jury. I am as sure as I am of my own existence that anything like a foregone conclusion has not animated any one of you. I should consider the glory of our name tarnished for ever if the thought could once be admitted that twelve Englishmen could be collected in a Jury-box with any other desire than to do the most perfect justice. What grand precedents you have before you, as to the way in which you should act. What splendid examples have been bequeathed to present days by Jurors in the past. Remember the ANNESLEY Case: a grand and honourable exception to that beadroll of infamies recorded in "HOWELL'S State Trials." Be inspired by the lofty independence shown

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* LETTER FROM CHARLES GUY.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—You will oblige me by inserting this letter in your next 'ENGLISHMAN.' I was a Witness in the late Trial, and swore to the identity of the Claimant with Sir ROGER TICHBORNE; and the verdict that was given has in no way altered my firm conviction that he is the man he represents himself to be. I knew him well in former days; we have often worked together, rooting up the old trunks of trees in the Park of TICHBORNE, and I have frequently observed his bare arms, and swear, as I did in Court, he was not tattooed.

I have seen him and Miss KATE DOUGHTY scores of times alone, both in the Park and outside of it. I have seen them riding out alone many times; and on more than one occasion have I watched them kissing and hugging each other. This is the testimony I gave in Court; that I have spoken about at the Public Meetings at Alresford, Poole, Bournemouth and Lymington; and which, with your permission, I here again repeat. So help me God, the Prisoner unjustly condemned to penal servitude for fourteen years is the Mr. ROGER TICHBORNE I so well knew in former days at Tichborne Park. I have no interest in the Case but that of doing my duty and telling the truth.—I beg to remain, your humble servant,

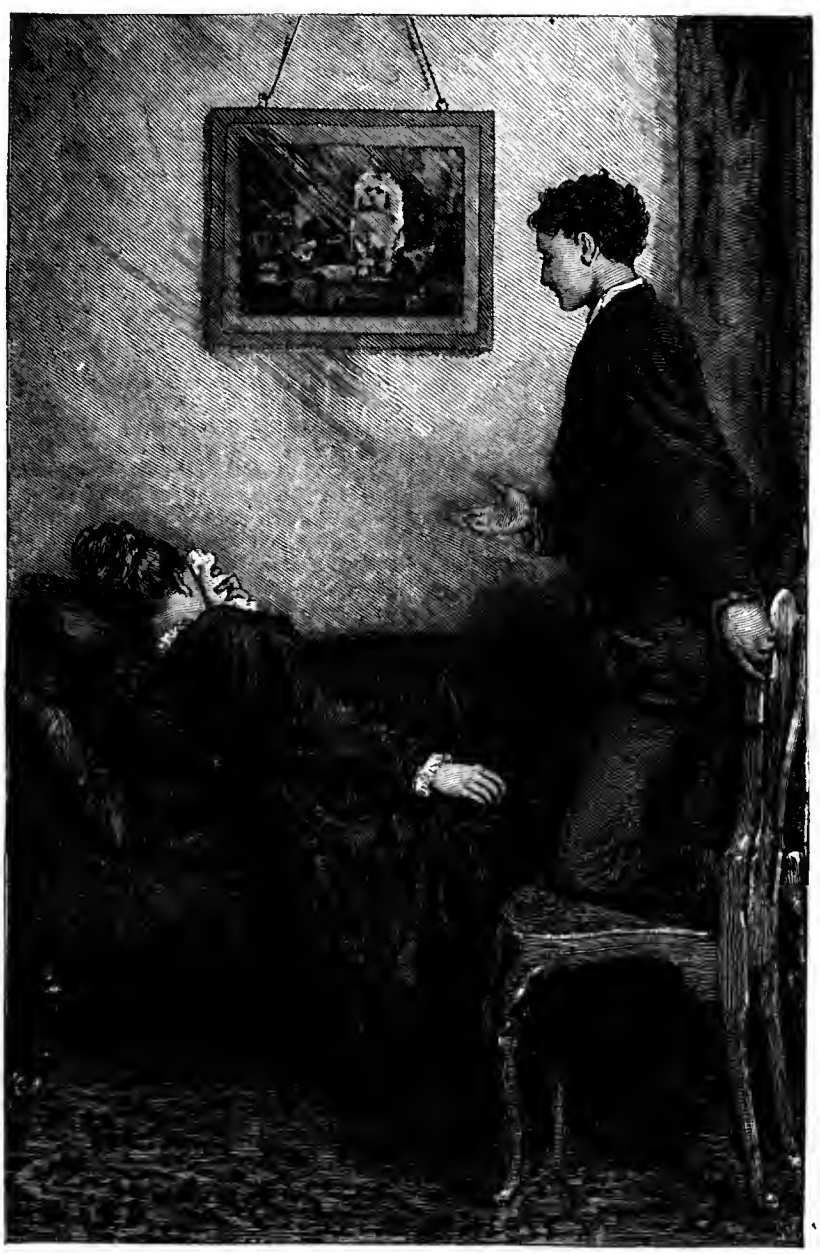
CHARLES GUY.

Tichborne, near Alresford, September, 1874.

in HONE's Trial. There the Chief Justice was determined to convict. Lord CAMPBELL, his biographer, records the fact. Here are his words:

"HONE had been tried and acquitted before Mr. Justice ABBOTT for publishing a parody. This acquittal being related to the enfeebled Chief Justice, his energy was revived, and he swore that at whatever cost he would presids in Court next day himself, *so that conviction might be certain, and the insulted law might be vindicated.* Accordingly he appeared in Court, pale and hollow-visaged, but with a spirit unbroken, and more stern than when his strength was unimpaired. As he took his place on the bench, 'I am glad to see you, my Lord ELLENBOROUGH,' shouted HONE, 'I know what you want.' 'I am come to do justice,' retorted the noble and learned lord, 'my only wish is to see justice done.' 'Is it not rather, my lord,' said HONE, 'to send a poor bookseller to rot in a dungeon?' In summing up to the Jury his lordship reminded them that they were sworn on the Holy Evangelists, and were bound to protect the ritual of our church from profanation. 'There are many things,' said he, 'in the parodies you have heard read which must be considered profane and impious, although divines and statesmen may be the authors of them; but this parody of the Defendant transcends them all in profanity and impiety. I will deliver to you my solemn opinion, as I am required by Act of Parliament to do. Under the authority of that Act, and still more in obedience to my conscience and my God, I pronounce it to be a most impious and profane libel. Hoping and believing that you are Christians, I doubt not that your opinion is the same.' The usual question being put, when the Jury after a short deliberation returned into Court, the Chief Justice had the mortification to hear the words 'Not Guilty' pronounced, followed by a tremendous burst of applause, which he could not even attempt to quell."—*Lives of the Chief Justices, III.* 224.

Oh! Gentlemen, how grand was that moment! How our



THE FAREWELL AT TICHBORNE HOUSE.

hearts beat with joy and pride as we contemplate these noble Jurymen, regardful of their honour and the honour of their country; watchful over the liberty of the man and the rights and liberties of the nation; gloriously heedless and independent of the smile, the sophistry, or the frown of the Chief Justice. Contrast them with the mean and sneaking Jurymen, who, at the bidding of the same infamous Judge, convicted COCHRANE, and by their disgraceful verdict covered the name of that Hero for half a century with dishonour. He was expelled from the Order of the Bath, he was expelled from the House of Commons. Afterwards, indeed, when his innocence was made clear, a species of tardy justice was done to him. But what could atone to him for the horrors he had endured? A nefarious Judge, and probably a packed Jury, consigned him to prison and a blighted character, but his name is now a shining glory in the annals of our land, and his illustrious career as a sailor will for ever encourage future seamen to deeds of heroism. But everlasting infamy attaches to those who contrived his ruin. "Would to GOD," says MONTAIGNE, "that for the sake of justice, our Courts of Judicature were as well furnished with understanding and conscience as they are with knowledge" (p. 56). But alas! I fear that this will never be.

Equal in its criminality was the Trial of O'CONNELL, at which I myself was present in 1844; a Trial which was afterwards pronounced by high judicial authority in the House of Lords, when the disgraceful verdict was set aside, to be "a mockery, a delusion, and a snare." How well do I remember that infamous mockery of justice; the sneering, jibing, sarcastic Chief Justice; the wooden Jury summoned to convict, upon whom no elevated sentiments, no august or patriotic considerations could make the least impress; who were picked and chosen and packed to convict in utter defiance of all Truth and Right and Justice. These wretches have passed from the scene of prejudice and passion, and temporary triumph; the grave wraps them; and

their sentence has been written; but on this earth also the everlasting brand of shame covers Judge and Jurymen and Witnesses; and to all future time, men will blush to have been descended from fathers who took a guilty part in that guilty Trial; that dark and shameful and dishonourable counterpart to HONE, and ANNESLEY, and the Seven Bishops.

Gentlemen, bearing in memory these fine traditions of which I have reminded you, I should be ashamed of my country and its laws and institutions if I could for an instant admit into my mind that anything but a verdict according to the evidence will be arrived at by you. It is necessary to make these observations, because you all know that there are thousands of people who have arrived at opposite conclusions on this issue. Although every one of you received at the beginning of this great Trial an intimation that you must be guided by nothing that may pass out of doors and in the ordinary intercourse of society, nevertheless, none of us can conceal from ourselves that, with every desire to avoid such things, you must have been drawn into conversations and topics connected with this great cause. But I am hopeful that nothing of the sort will influence you in the final verdict you will arrive at; and that there is not one of you at the close of this Trial will not be able to put his hand upon his heart and say, "I decided solely on justice and truth and the evidence." That is what your country expects, and justly expects, from you. The attention that each and all of you have paid to this Trial, considering its enormous length, considering its multifarious variety, has been something marvellous. You may have occasionally formed erroneous judgments; but the time now approaches when, in the retirement of your own room, you will calmly discuss all these things, and when you will ultimately give your verdict, which you will give, as I believe unanimously, in favour of my Client. I repeat that the evidence is as weighty and irresistible as the waves of the mighty ocean itself. I do not base my Defence of this gentleman on the mere number of Witnesses, though I have a greater number of Witnesses than have been called on the other side, and though there are some that I have not called—I base my claim to a triumphant verdict upon this—that my Witnesses have been perfectly unshaken. My Witnesses have given what I may call a torrent of evidence, such as never before was presented in any Court, and if this does not convince you it will lead everyone to think that before human tribunals justice cannot triumph. Take into account the grand whole of my testimony. Do not condemn the man whom I represent because, by accident, or something else, which I do not like to characterise, we may have called a certain person whom you do not believe. Give your verdict upon what you do believe, upon what is true, and do not say there is an imperfection here and a failing there. It has been the misfortune of my Client that a man has been introduced whose evidence is calculated to create a prejudice against him. Oh! condemn him not for this. Gentlemen, the Witnesses I have called were subjected to cross-examination as thorough and as searching as any Witnesses could be subjected to; and they have been under the observation of that legion of Detectives and Policemen which the Prosecution could command. View the testimony of my Witnesses as a whole, and then you can only arrive at one conclusion. I say respectfully you dare not arrive at any other conclusion than a conclusion in my favour. That is language which I could not venture to address to you if I had not the fullest conviction that you mean to do the most perfect and absolute right; irrespective of all its consequences to this person or to that, to this party or to that, to this faction or to that, whether the faction be on the side of the Prosecution or on the side of the much maligned ONSLOWS, BIDDULPHS, RIVERS'S, and WHALLEYS. Nothing can shake my faith in you. I have heard observations from some of you now and then bearing against the Cause I represent; nevertheless, I have faith in you. Certain things have been said by persons amongst you which may have conveyed the notion to my mind, that there was an idea that in somethings I was wrong. Do you think I regard this for a moment? No, I respect the man who openly expresses his thought, and is honourable enough to let me know that there are rocks ahead. I have always treated such men, though they appeared to be my adversaries, with respect, because certain was I that at the solemn moment when you all assemble they will be ready to surrender any hasty opinions, which existed once to the great might of Truth which I say has been and is represented by me in this Case. Is there any man in the world who believes that the Defendant is ORTON? The question is calculated to provoke laughter and ridicule against me for suggesting such a thing. The Prosecution have produced their letters—whether genuine or not, I will not surmise; and this, that, and the other; and I believe every man of you is at this moment satisfied that he is not ORTON. I don't know whether I may be allowed to say so, but I believe that to be the universal feeling of England——

The LORD CHIEF JUSTICE: Really Dr. KENEALY, if you ask me whether you may be allowed to say so, I must say that you ought not to say it. We have nothing to do with the universal feeling of England.

Dr. KENEALY: Well, my lord, I hope we have.

The LORD CHIEF JUSTICE: Certainly not as influencing the judgment of the Jury.

Dr. KENEALY: I have already stated my most full and perfect conviction that they will not be biassed by any feeling out of doors. Nevertheless, I don't believe it is against any rule of law or right for me to express what I think is the opinion—the almost unanimous opinion—in the country about the matter. Then, Gentlemen, the question arises—Is he TICHBORNE? The Prosecution, as it appears to me most unfortunately for themselves, have staked their reputation upon his being ORTON. Well would it have been for them, as I imagine—far more wisely would their counsels have been directed—if they had raised one simple issue before you, and said, "Who this man is, is of no consequence to us. He may be TOM, or DICK, or HARRY; we don't know. We do not take upon ourselves to be able to show who he is, but only take upon ourselves to show who he is not, and he is not ROGER TICHBORNE." But they have gone further, and in doing so have made the most fatal mistake ever committed by a Prosecution. They have undertaken to show to you as a portion of their case that he is not TICHBORNE because he is ORTON, and they stake, as it were, their case upon that. And I retort upon them, "I have demonstrated that he is not ORTON, and I have proved that he is TICHBORNE, and, if he is not ORTON, who can he be but TICHBORNE?" The whole of that has failed, and the failure is such as I believe never before was similarly demonstrated in England, because, I repeat, I don't believe there is any man living—unless, at all events, some miserable people connected with this Prosecution, or some wretched hangers-on or time-servers of the Government who expect to get some sop to fill their mouths—I don't believe there is one honest man in England who believes this is ARTHUR ORTON. No lie, Gentlemen, can live beyond a certain time, and, luckily for truth and justice, the time is very short indeed; and it is absolutely unknown—certainly absolutely unknown in the annals of mankind—that during such a long period as this, a man has successfully maintained an imposture like this. For a man to pass himself off as another in a room or in a seclusion is what is possible; but for a man to go abroad amongst his countrymen and show himself openly and mix himself among every class of society—high and low—and among the low, who are very shrewd on the whole, is implicitly believed to be what he represents himself to be, and among the high is received and recognised as a gentleman in his manner and deportment, and a man worthy to rank with themselves—to say such a thing is possible and could have lasted so long in the free light of England is to say that which I venture to declare could never have happened. Did anybody ever hear that a false impostor could get two or three hundred people to swear he was a true man? If such a thing ever happened, I must confess it is not a matter within the ken of my observation. And yet you are asked to believe that in England, in the 19th century, with every newspaper and every man in the country discussing the whole Case, you are asked to believe that this enormous legion of Witnesses—the vast majority of them Carabineers and men who, I say, every Englishman may proudly put forth before the whole world as a fair and honourable specimen of what his countrymen are—you are asked to arrive at that most monstrous and incredible conclusion. You will remember, Gentlemen, they do not venture to say it is all perjury. They may taint the Witnesses one by one, and insinuate individually that this and that one is false, and that the others have been victims to a foolish delusion. They may resort to all those arts which are supposed to belong to smaller and to baser Courts, but which I never thought I should live to see in this, the highest Criminal Court that the Country can command. They may have done so from day to day, and endeavoured to sap your judgment; but I venture to say that when Mr. HAWKINS comes to address you to-morrow he won't tell you that these Witnesses are all false. No, he will express great sympathy and commiseration for them for being such fools as to have allowed themselves to be magnetised and mesmerised by this man into the delusion that he is their old Officer whom they saw every day, from whom they every day received their commands, with whom they drilled side by side, and whose features they know as well as I know the features of every one of you at whom I have been looking for months past. And, Gentlemen, I should very much like to see the man who ten years hence, being a perfect stranger, should present himself to me and say, "Don't you remember that I was the Foreman of the Jury in the great TICHBORNE Trial?" How do you think he would look when I really looked at him? How do you think an impostor would be able to bear my examination? Bring it home to yourselves in that way. Ask yourselves if any one of you ten or fifteen years hence—if I should live so long—could be persuaded into the idea by a perfect stranger that the man who came before you was I, with the faculty of observation and memory which I suppose every one of you to possess. I ask you to give credit in the same way to the recollections of these Carabineers who come before you, and who, without the shadow of a doubt in their minds, say they are as certain he is their old Officer as they are of their own existence. To say they are under a delusion is absurd, and yet I suppose that will be the argument addressed to you by Mr. HAWKINS; and because they may be wrong about the month or about some trivial incident, or make a mistake which some of the most clever men in the world may do, Mr. HAWKINS will look at you very gravely—no, I was wrong in saying he would look gravely; he can't do that, but he will look funnily—(a laugh)—and ask you not to believe these Witnesses because they have made errors of this contemptible kind. Gentlemen, there is one observation which I ought to have made to you when I was on the subject of that scandalous Witness whom I had the misfor-

tune to call, and that is this—Do you believe that the Defendant, surrounded as he was by persons who are insinuated—and most falsely and wickedly insinuated—to you as bad advisers in a bad cause—do you think, with all England before him and them, with all the seaports at his command, the Defendant would have been so foolish as to select from all other people a ticket-of-leave man to support his cause? Sailors were wanted, and sailors might have been looked for, and possibly might have been found, at some of our English ports, who could have given any evidence that was required. Certainly, nobody but people red-hot from Bedlam would ever have thought of calling a ticket-of-leave man as one of their staple Witnesses, and trusting to the chapter of accidents that he would not be discovered. It has been one of the gravest misfortunes for this man that such a Witness has been called in his cause, and it will always be asked, Did he not know the man who rescued him in the 'Osprey' twenty years ago? The only answer is that he was at the time in such a condition as not to be able to take sufficiently close notice of him to remember him after such a period. And all that he could arrive at was this—There is a man who tells me a variety of things which no man could have known unless mixed up in that, the crowning and most unhappy transaction of my life. He tells me of things that I may have only a vague recollection of. I may not actually and personally recollect him; but how does he get all this knowledge if he be not the man he represents? Gentlemen, we are all of us credulous, and easily led when great interests are at stake; and it would be judging most rashly, and, as it seems to me, most contrary to all experience of human nature, if, because a man made a mistake of this kind, his judges should arrive at the conclusion that it shows a consciousness of guilt. I believe when the time comes you will take into account the marvellous cleverness and cunning of this Witness, which for a long time deceived thousands and thousands of your countrymen, and which may have also misled this man now upon his trial. Oh, how greatly to be pitied is this Defendant! Never before did any man live, so far as I know, in such a crisis of fate and misfortunes. He has lost by death and other means the very persons that could have supported him in his trouble and sad misfortunes. Had his Mother lived she would have saved him from untold miseries and misfortunes. Yet, by one of those extraordinary circumstances which sometimes happen—whether by accident, or it may be the decree of NEMESIS that falls upon him as it does upon many others—his sins found him out. He had heartlessly and ruthlessly abandoned that lady for years, regardless of her trials and her sorrows. He hid himself from society, and cared not under what cloud of suffering she passed. That lady whom he so wronged was taken from him when he had most need of her, and the event may well be taken as one that powerfully demonstrates the existence of an over-ruling Providence, and looked on as an act of justice and retribution for the long years of misery and sorrow he had caused her. That retribution, I say, he has most justly deserved. We hear of his abandoning his Cousin. He abandoned his own Mother—he abandoned the woman who had brought him up, and was the most affectionate Mother that ever lived. If he did that, he was capable of abandoning his Cousin also. Lady TICHBORNE was the friend the Defendant first saw when he returned to England. Never let it escape from your memories that before that wild expedition to Wapping, which no one but a wild man out of the woods would have undertaken, he sought his Mother, and failed to find her. Never let one of you forget that the first person he inquired for when he arrived in this land, but whom he could not find, was Lady TICHBORNE, and that then, animated either by drunkenness or madness, or Heaven only knows what, he goes on that journey to Wapping which is always brought up against him as one of the most suspicious incidents of his life—under what circumstances and from what reason I am utterly unable to tell, but under circumstances and for reasons that, as I said before, are perfectly inconsistent with the character and design of ARTHUR ORTON. But she was not the only person whom he immediately sought for, for he goes to HOPKINS, than whom no man in the world knew him better; and observe he does not wait for HOPKINS to seek him, but goes at once to Alresford to seek HOPKINS. He was a lawyer of the old school; and a higher praise I cannot give to any man, because, if you have ever come into association with any of these gentlemen, as no doubt you have, you must have noticed that they belonged to a class so acute and clear-seeing that you might as well expect to deceive one of the Judges on this Bench as to deceive one of them. Yet HOPKINS is the man whom he seeks, and who was positively and absolutely persuaded at the very sight of him, from the conversation, by the incidents that were revived, and the individuals that were mentioned, that he was the real man. That is the man who immediately takes him to his own house, who receives him as an honoured guest, who introduces him to his wife and to his friends, goes about with him, and says, "This is ROGER TICHBORNE," and it is one of the misfortunes of this most unfortunate man that Mr. HOPKINS is likewise removed by death, though not until he has demonstrated in every way possible, by hospitality, by affidavit, by everything which could commit a man to a cause which he believes to be just and righteous, that this is ROGER TICHBORNE.

The LORD CHIEF JUSTICE: Is there such an affidavit? I should very much like to have seen it, for it might throw much light on the Case.

Mr. Serjeant PARRY: It was not put in evidence.

The LORD CHIEF JUSTICE: That is to be regretted.

Dr. KENEALY: I also regret it, because as your lordship says it would have thrown great light on the Case.

The LORD CHIEF JUSTICE: I say it might have done so.

Dr. KENEALY: Gentlemen, CARTER and M'CANN have also passed away from the scene of life, and CARTER and M'CANN can now be vilified with impunity. I should like you to have seen them, and to have said whether they were the tools and villains they have been represented. Whenever Mr. HAWKINS or the Prosecution are in a strait, CARTER and M'CANN is the war cry. How could CARTER or M'CANN tell the questions that the Carabineers were going to ask? Gentlemen, those men have been torn out of their graves as the vampire tears a dead body out of the grave. They have been fed upon by this Prosecution in the worst spirit imaginable. Do his misfortunes end here with the death of those persons who knew him best? No. His cause is tried in the Common Pleas. He calls upwards of 80 Witnesses, a vast majority of them perfectly unshaken in their testimony. They have walked through fire, and have been untouched, and then a Jury—led away by a speech—led away by a lord—led away by some 13 or 14 people—were not ashamed before the whole of their countrymen to get up and say, "We have arrived at an opinion." There was a misfortune of an almost irremediable kind, and instead of being left to the ordinary Prosecution of the country, he is committed for Trial, and prosecuted by the whole force of the powerful government of Great Britain. The calamities which have fallen upon him are such as have never before fallen upon any man; and these things happened supported by his own nearest relatives—supported by Lady RADCLIFFE, for whom an immense amount of spurious sympathy is sought—who, if she knew he was her Cousin, and I have demonstrated to you that he is—what sort of a woman must she be to stand by while that man was lying in Newgate, under every kind of depression, obloquy, and misery that can fall upon a human being? This may be satisfactory to her, but it can hardly be satisfactory to you, and I think it ought not to be so. Gentlemen, in a generous nature one would have thought an accumulation of wretchedness like this would have created some compunction. But it is not so. He has been prosecuted with a virulence which I hope will never be witnessed again in this country. I hope I shall never again live to see every rule of law pressed, as they have been pressed during this Trial, in the strongest possible way against this man. No sympathy, no feeling has been shown—nay, I doubt whether in some instances they have not strained the rules of law against him more strongly than they ought to have been strained in a Case of this description. Gentlemen, it has been said that it is impossible for a man in TICHBORNE'S position in society ever to lead the life that the Defendant has led. The life he led in Australia seems to me much akin to the life which was led in Scotland last century by those who engaged in what was called "cattle-lifting;" and gentlemen of as high honour and intelligence and position as ROGER TICHBORNE felt a wild and glorious freedom in that kind of life. But the cattle-lifting of Scotland during the last century probably differed very little from the bushranging of later days and more recent times in Australia. And yet is there any one of us who would now condemn those who may have committed exploits of that nature? What, Gentlemen, are you called upon to do, not in words, but practically? You are called upon to convict of perjury such persons as Mr. BIDDULPH, as Colonel NORBURY, as Captain CUNLIFFE, as Captain SANKEY, as Mr. BULPETT, as Miss BRAINE, and as Lady TICHBORNE. No man can ask you seriously to come to the conclusion that those persons are mistaken. A mother mistake her son! A cousin mistake his cousin! These old soldiers mistake their old comrade! It is not possible. Could Colonel NORBURY be mistaken? Never was there a man who went into a Case with a greater determination to ascertain the truth than Colonel NORBURY. He believes he has ascertained the truth, and he believes this is the true man before you. And all that was urged about Lady TICHBORNE having a craze and such like nonsense failed, as it deserved to fail, in a manner which brought ridicule on the whole Prosecution. The law of England is that the accuser must prove his case. The law of England does not call on me to prove the innocence of this gentleman, but I have proved his innocence. I hope you will give due weight to the fact that the Government has, to a certain extent, committed itself to this Prosecution. The present Government in such charges are always excepted, because they are generally models of perfection. But there have been Prosecutions in England conducted with all the weight of governmental power which have brought the vilest stains on the character of England. It may happen in future generations that the same judgment will be passed on this Prosecution which you and I are accustomed to pass on the Prosecutions of CASTLEREAGH and SIDMOUTH. Is there an Englishman who does not look back with shame on the Prosecution of one of the greatest of Englishmen, WILLIAM COBBETT? Let us take heed that fifty years hence the Prosecution of this Defendant may not be looked back to as a shame and dishonour to the country. There were days when people thought the Prosecution of Queen CAROLINE was a just and noble act; but is there an Englishman now who does not regret that such an infamy should have been perpetrated? There were days when it was thought a grand and glorious thing to persecute and convict so distinguished a man as Lord COCHRANE; but who does not now admit that the

persecution of that great commander cannot be exceeded in unworthiness in the annals of our country? A species of restitution was made to that distinguished commander, and he was afterwards restored to his honours; but nothing could atone to him for the troubles he had gone through, and nothing can eradicate the remembrance of that Government Prosecution. I ask you not to look at the motive of the passing hour, by which you may be misled. I have been told, "You are speaking above the Jury," but I believe there is no height too high for you to raise yourselves to; and I believe that every one of you in his heart has a most august and solemn reverence for Truth and Justice, and that you will be actuated by nobler convictions than those who unfortunately lent themselves to the Government Prosecutions of former days. We are living in a different era. I think we are living in a more exalted age. I ask you for your verdict; for a verdict which will command honour for you all from all future generations. I ask you for it; nay, I demand it; and I have the strongest conviction in my mind that you cannot refuse me that verdict. I have the most complete faith that ever entered the mind of man that, no matter what passing thought against the Case I represent may occasionally have flitted over your understanding during the past eight or nine months, yet looking upon this Case in its grand unity, every man of you will say that the honour of Englishmen and your own consciences compel you to find a verdict for the Defendant. With him we have no sympathy, or with his follies; but you will say we are the servants of Right and Justice, and in the name of that Right and Justice we are compelled to say this man is not guilty. How can we bring ourselves to the monstrous idea that it ever happened in the annals of the world since the world began that a person in the condition of Lady TICHBORNE could have been the victim of the delusion that is presented before us? By the spirit of that departed lady I adjure you never to lose sight of her from the beginning to the end of this Case; and in her name and in the name of justice, I demand an acquittal for ROGER TICHBORNE.

The learned Counsel resumed his seat amidst loud applause, which was at once repressed by the Officers of the Court.

The Defendant was understood to make the following remarks to Dr. KENEALY: Doctor, I tender you my very sincere thanks for the very able manner in which you have defended me; and I hope I shall soon be able to clear off some of the £1200 I am still indebted to you.

[The Court adjourned at half-past three.*]

*TICHBORNE'S OPINION OF DR. KENEALY.

A country paper published the following extract of a letter from Mr. HELSBY with reference to one of his visits to Dartmoor:—

"Extract from a letter received from Mr. HELSBY:—'I am so far glad that I went to see TICHBORNE, because it gave him pleasure to see me; but I shall never forget the poor fellow's careworn and dejected expression. We dared not ask him about his food, but I have a very strong opinion that he is being *half starved*. One cannot wonder at his having *no hope*, after seeing what a hell Dartmoor is. He cried like a child when ONSLOW and I bade farewell and left him with Dr. KENEALY and the warder. We promised in the name of hundreds of thousands of our fellow-countrymen and women that we would stand by him till the end. May God help him and us in our efforts on his behalf.'

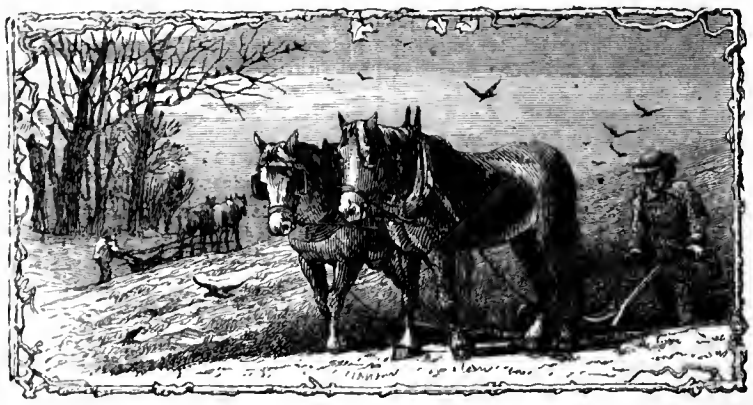
"At the desire of many persons, we reprint the Dialogue in Court between Sir ROGER and Mr. HELSBY:—

"'Mr. HELSBY: *Where in the world did you find the Doctor?*

"'Sir ROGER: *I was advised by my best friends to have him at the late Trial, and I wish I had. It would never have come to this, if he had been my Counsel. He is not to be bought—his equal is not to be found in England.*'"

LORD WESTBURY ON SIR J. COLERIDGE.

Lord WESTBURY had a lower opinion of the above illustrious individual than Mr. DISRAELI: the latter called him "silver mediocrity," but the former considered him nothing better than "Brummagem plated over," in fact, he regarded him in all respects as a sham, and made no secret of it. Talking to one of the Judges previous to the first TICHBORNE Trial in 1872, the latter asked him what he thought would be the result. The ex-Chancellor made answer, "It will be a great public benefit, for it will expose at least ONE GREAT IMPOSTOR."



SUPPLEMENTAL NOTES.

We insert the following as throwing not a little light on the general conduct of the TICHBORNE Prosecution and of persons engaged in it, then and since. We think also that as these Volumes are a History, as well as a Report, they are worthy of preservation, and will be valuable and curious in future times, when it might not be easy to procure copies of the documents which are preserved here.

THE 'DAILY NEWS' ON DR. KENEALY'S SUMMING-UP.

The following appeared in the 'Daily News,' on the close of Dr. KENEALY'S Summing-Up for the Defence. It is not destitute of talent.

"The close of Dr. KENEALY'S Speech for the Defendant in the TICHBORNE Case is an event which calls for remark. It is hard to say whether people ought to be glad or sorry that the close of the speech indicates that the Case itself is on its way to a conclusion. Life to a good many persons will not seem quite the same when the morning no longer brings the reports of the TICHBORNE Case. Apart from the extraordinary interest which the cause itself possessed—and which has never been even approached by that of any other Trial during our generation—it had the faculty of involving itself as it went along in new complications of controversy, and in new developments of human ingenuity. No one, probably, believed that the eloquence of man was equal to such extraordinary efforts until this unprecedented series of lawsuits came to occupy public attention. We have for the first time in the history of our Law Courts had speeches going on from day to day for weeks and almost for months. To assume that this or the other learned gentleman will occupy a month in his address to the Jury has become almost a matter of course. To suppose that any advocate could possibly compress his observations into the space of, say a fortnight, would be to stamp one's self as old-fashioned, and out of harmony with the conditions of things which the TICHBORNE Case has brought into existence. Of late, too, there has been a literary and scientific interest attaching to the speeches, and to the discussion which accompanied them like a symphony—a literary, scientific, and psychological interest quite independent of any of the questions at issue in the Cause itself. To read the reports each day was often like glancing over BURTON'S 'Anatomy of Melancholy,' or MONTAIGNE, or the notes to 'Hudibras,' or the notes to GIBBON. No one ever could tell what subject might not present itself for discussion, what odd citations might not be made, what little glimpses into history and fiction and art might not be forthcoming, what snatches of gossiping biography, what pleasant scraps of personal anecdote. The speeches had the advantage, too, over any of the celebrated works to which we have referred, that they drew forth instant discussion, and the comparison of authority and the liberal accumulation of scholarship and illustration. Dr. KENEALY, for example, cites the evidence of some striking passage in the private life of some eminent man. The Chief Justice questions the interpretation of the passage on which the learned Counsel relies. A conversational inquiry into the life, character, habits, and way of thinking of the great man springs up. Dr. KENEALY strengthens his view of the matter by anecdotes of other great men, who, under similar conditions, did or said exactly the same sort of thing. The Bench supplies several cases of great men who did just the opposite. Everybody contributes his anecdote. Sometimes it is contended that the anecdote told of one person ought properly to have been told of another. Discussion takes a new turn. Theories are put up and set down on all subjects of human interest—theories literary, scientific, moral, philological, metaphysical, social. The theory of the inseparable connection between fatness and stupidity in the human subject came up again and again for lively controversy. The theory of the Norman hand, if it had not been blown to air by an unlucky technical correction, might have opened up an inquiry as widespreading, various, and interesting as LESSING has developed from the distention of the mouth of the central figure of the Laocöon.

"The great charm of such books as 'Gulliver's Travels,' we are always told, is that they can be read with equal interest for many different purposes, and by various sorts of students. The child who believes them to be true—every word—and the elderly philosopher who cares nothing about the narrative, and only enjoys the satirical illustrations of human weakness, feel an equal amount of delight. So, perhaps, of the TICHBORNE Case. One set of people follow up the narrative, and care nothing for the comments; another set pay hardly any attention to the connection of the evidence, and are chiefly interested in the episodical controversies which sparkle here and there through each day's reports. We travel half the globe as the Case goes on. We sail the seas in the 'Bella'; we see between us and the horizon the mysterious cordage and the dim sails of that mocking phantom-barque of the Case, the 'Osprey.' We are with CASTRO in the bush; we watch ARTHUR ORTON'S marvellous feats of horsemanship: we are landed, all dazed and bewildered, upon the quay at Melbourne; we rest awhile under the glowing skies of Rio; we exchange a word in passing with Captain BURTON in the Andes, as the shepherd going out of the gate in the 'Odyssey' calls his greeting to the shepherd coming in. Far back we are borne among the youthful philosophers at Stonyhurst, where the ingenuity of counsel conjures up for us visions of Jesuitical plotting and darksome moulding of youthful character which might have suited the terrible ecclesiastic in EUGENE SUE'S 'Wandering Jew.' Every grove and path in or near the ancient residence of the TICHBORNES is familiar ground. We visit Paris, we visit Ireland; we learn every incident of mess-room vivacity and barrack horse-play. We study death's head shirt studs and peculiar pipes. Every phase of the story has its different scene. Wagga-Wagga will have its pilgrims, as Wapping has. The Globe public-house is to many persons an object of greater interest than anything connected with the Globe Theatre, Southwark, could possibly be. The Witnesses arrange themselves in geographical and ethnological groups. 'My Carabineers,' as Dr. KENEALY styled them, call up associations quite distinct from the Hampshire Witnesses and the Melbourne Witnesses. Then there were all the various episodes which had in their turn such elements of excitement. The Contempt of Court episodes, the LUIE episode, the episode of the smudged photograph, and all the rest of them—each in its turn, like the stories introduced into 'Don Quixote,' seemed to have interest enough of its own to stand independent of the main narrative altogether.

"The time now appears to be quite far away when people thought of Sir JOHN COLERIDGE and Mr. Serjeant BALLANTINE as the principal figures in the daily pageant. The famous cross-examination of Mr. BAIGENT by Mr. HAWKINS seems to belong to another judicial age. Sir WILLIAM BOVILL has passed away; and the 'Solicitor-General' who was so conspicuous in the Trial over which he presided, now occupies his place on the Bench of the Common Pleas. Witness after Witness has died since the great inquisition began. In other countries Empires have fallen and Empires have risen; battles, sieges, fortunes of all kinds, from the prostration of an historical Column to the formation of various Republics, have succeeded during the interval between the opening of the first TICHBORNE Trial and the close of Dr. KENEALY'S Speech in the second. Meanwhile, the Claimant or the Defendant sits imperturbable and serene. There was a time when he could describe himself in one of his letters as being 'more like a mannick than a B. of B. K.,' but he has since then apparently acquired a temperament more suited to defy the chances of fate. He sits like Mr. KINGLAKE'S Sphinx, with the same calm, unruffled brow, and the same tranquil gaze everlasting. But the close of Dr. KENEALY'S Speech admonishes us that nothing in the Cause is, after all, everlasting. It is difficult to think that before long, if human events do not diverge strangely from their expected course, the Case will have come to an end. We find it hard to believe in a time when we shall hear no more about tattooing, and the Sealed Packet, and Mr. BOGLE and Mr. BAIGENT, and the Rio Witnesses, and the Wagga-Wagga Witnesses, and woman's powers of memory, and man's capacity for oblivion, and the ORTON family, and the relative sizes of boots, and hands, and heads, and all the rest of the various topics which have been our daily food since a short time after the Battle of Sadowa and the passing of Mr. DISRAELI'S Reform Bill. Many people will not know for some time what to do with their thoughts, or at least with that large proportion of them which they were in the habit of bestowing upon this TICHBORNE Trial, and which are so soon to be thrown out of employment. The close of Dr. KENEALY'S Speech is a timely warning. Like the admonition of the slave to the Caliph, it bids us to remember that they, too, will pass away. Some persons may take the warning as a signal to redouble their attention, and read and hear all they can while time is yet. Others may prefer to begin already weaning their thoughts away, so that they may be found prepared for the end. But the warning is, in one sense or other, for every one: The TICHBORNE Case draws to a close."

CHIEF JUSTICE TRESILIAN.

This man was promoted to the office of Chief Justice, June 22nd, 1381. He immediately accompanied the King (RICHARD II.), to St. Alban's, and the mode of trial he adopted was somewhat novel. He forced one Jury of twelve to present the ringleaders of the insurgents, according to a list previously prepared; a second Jury was next empanelled, who confirmed the finding of the first; and then the same course was adopted with a third Jury. No Witnesses appear to have been examined, but every party charged was condemned on the personal knowledge of those thirty-six men. The executions here and in other countries are described as being most numerous, and TRESILIAN'S cruelty as having had no parallel till the campaign of Judge JEFFREYES three centuries afterwards. KNIGHTON, a contemporary chronicler, states that whoever was accused before him, whether guilty or innocent, was sure to be condemned.

His capture and execution are thus told. The KING had joined the Duke of IRELAND at Bristol, and being desirous of knowing what proceedings were contemplated by his uncles at Westminster, TRESILIAN volunteered to undertake the perilous journey. He reached London without discovery, and taking up his lodgings in an alehouse, or, according to another account, at an apothecary's opposite the palace gate, he had ensconced himself in a window so that he could observe every one who passed. His disguise, however, though sufficient to mislead ordinary observers, could not deceive a squire of the Duke of GLOUCESTER'S who had been often in his company. Thinking that he recognised the Chief Justice, he went in, and had an interview which satisfied him that he was not mistaken, although TRESILIAN represented himself as a farmer on Sir JOHN HOLLAND'S estate in Kent, come up to town in order to obtain redress for some wrongs done to him by the men of the Archbishop of CANTERBURY. The squire, pretending to believe him, went directly to the Duke, his master, by whose orders he returned with a sufficient guard, and brought the unfortunate Judge before the Council. His fate was not long delayed; for, after a short colloquy with the Duke, he asked what he had to say why execution should not be done according to the judgment pronounced; and, as one struck dumb, so that he could not answer, he was led away to undergo his sentence. FROISSART says he was beheaded, and after hanged upon a gibbet; but the Parliament Roll states that he was taken to the Tower, and thence drawn through the City, and hanged at Tyburn. Another account relates that his wife and children, with many tears, accompanied him to the Tower, and that she fell down in a swoon overcome with grief. It describes that, in his transit from the Tower, the hurdle on which he was dragged was frequently stopped that he might confess to the friar who attended him; and that he not only refused to mount the ladder till he was forced by blows to do so, but, when there, he declared that he should not die while he had any clothes upon him; whereupon, on being stripped, many charms were found about his person, and he was actually hanged up naked. His body was buried in the Church of the Grey Friars.

AN EXAMPLE TO BE FOLLOWED.

FOSS, in his Judges of England, ii. 225, speaks of HENRY DE BATHONIA, Chief Justice, who was appointed to his office, 34 HENRY III., 1250. He was accused, he says, by PHILIP DARCY, of bribery and corruption, whereby he had raised a great estate on the ruin of others. Four-and-twenty knights became security for his appearance to answer the charge before the Parliament summoned for February 17, 1251, 35 HENRY III. The King is represented to have made proclamation, *calling upon every one who had any accusation against him to bring it forward.* On being tried he was found guilty, and was fined 2,000 marks. This happened more than 600 years ago, when our ancestors had not had Reform. Are *we* unfit to follow their great example?

OF COKE'S STYLE AND HIS CONDUCT.

This great lawyer, perhaps, set the example of that style of railing and invective in the Courts which the egotism and craven insolence of some of our lawyers include in their practice at the Bar. It may be useful to bring to recollection COKE'S vituperative style in the following dialogue, so beautiful in contrast with that of the victim before him. The Attorney-General had not sufficient evidence to bring the obscure conspiracy home to RAWLEIGH, with which, I believe, however, he had cautiously tampered. But COKE well knew that JAMES the First had reason to dislike the hero of his age, who was early engaged against the Scottish interests, and betrayed by the ambidextrous policy of CECIL. COKE struck at RAWLEIGH as a sacrifice to his own political ambition as we have seen he afterwards immolated his daughter; but his personal hatred was now sharpened by the fine genius and elegant literature of the man—faculties and acquisitions the lawyer so heartily contemned. COKE had observed "I know with whom I deal; for we have to deal to-day with a man of wit."

COKE: Thou art the most vile and execrable traitor that ever lived.

RAWLEIGH: You speak indiscreetly, barbarously, and uncivilly.

COKE: I want words sufficient to express thy viperous treason.

RAWLEIGH: I think you want words indeed, for you have spoken one thing half a dozen times.

COKE: Thou art an odious fellow; thy name is hateful to all the realm of England, for thy pride.

RAWLEIGH: It will go near to prove a measuring cast between you and me, Mr. Attorney.

COKE: Well, I will now make it appear to the world that there never lived a viler viper upon the face of the earth than thou. Thou art a monster; thou hast an English face, but a Spanish heart. Thou viper! for I know thee, thou traitor! Have I angered you?

RAWLEIGH replied, what his dauntless conduct proved, "I am in no case to be angry."

COKE had used the same style with the unhappy favourite of ELIZABETH, the Earl of ESSEX. It was usual with him; the bitterness was in his own heart as well as in his words; and Lord BACON has left among his memorandums one, entitled, "Of the abuse I received of Mr. Attorney-General publicly in the Exchequer."

A specimen will complete our model of his forensic oratory. COKE exclaimed: "Mr. BACON, if you have any tooth against me, pluck it out, for it will do you more hurt than all the teeth in your head will do you good." BACON replied, "The less you speak of your own greatness, the more I will think of it." COKE replied, "I think scorn to stand upon terms of greatness towards you, who are less than little, less than the least."

COKE was exhibited on the stage for his ill usage of RAWLEIGH, as was suggested by THEOBALD, in a note on Twelfth Night. This style of railing was long the privilege of the lawyers; it was revived by Judge JEFFREYES, but the bench of Judges in the reign of WILLIAM and ANNE taught a due respect even to criminals, who were not supposed to be guilty till they were convicted.

When COKE once was himself in disgrace, his high spirit sank, without a particle of magnanimity, to dignify the fall: his big words, and his "tyrannical courses," when he could no longer exult that he was "upon his wings again," sunk with him as he presented himself on his knees at the Council-table. Among other assumptions, he had styled himself "Lord Chief Justice of England," when it was declared that this title was his own invention, since he was no more than of the King's Bench. His disgrace was a thunderbolt, which overthrew the haughty lawyer to the roots. When the supersedeas was carried to him by Sir GEORGE COPPICE, that gentleman was surprised, on presenting it, to see that lofty "spirit shrunk into a very narrow room, for COKE received it with dejection and tears." The writer from whose letter I have copied these words adds, O tremor et suspiria non cadent in fortem et constantuu.—'Curiosities of Literature,' by DISRAELI, ii., 539.

LORD CHIEF JUSTICE SCROGGS.

SCROGGS, says Lord CAMPBELL in his 'Lives of the Chief Justices,' had excellent natural abilities, and might have made a great figure in his profession; but he was *profligate in his habits*, brutal in his manners, with only one rule to guide him—a regard to what he considered his own interest, without a touch of humanity; wholly impenetrable to remorse. He was the son of an Oxfordshire squire, and was entered as a student of Gray's Inn. He was, says ROGER NORTH, a great voluptuary, his debaucheries egregious, and his life loose, which made the Lord Chief Justice HALE detest him. His visage being comely, and his speech witty and bold, he was a favourite with Juries, and sometimes carried off wonderful verdicts; but when he ought to have been consulting in his chamber in Serjeant's Inn, he was in a tavern or gaming house, or worse place, near St. James's Palace. Thus his gains were unsteady, and the fees which he received were speedily spent in dissipation, so that he fell into a state of great pecuniary embarrassment.

SCROGGS was appointed Lord Chief Justice in May, 1678. How he conducted himself in Civil suits is not mentioned, for the attention of mankind has been entirely absorbed by his scandalous misbehaviour as a Criminal Judge. He is looked to with more loathing, if not with more indignation, than JEFFREYES, for in his abominable cruelties he was the sordid tool of others. *Although quite indifferent to religion*, and ready to have declared himself a Papist, or a Puritan, or a Mahometan, according to the prompting of his superiors, he professed an implicit belief in all the wonders revealed by OATES.

One of his victims was STAYLY, a Banker. The unhappy convict's friends were allowed to give him a decent burial; but because they said a mass for his soul, his body was, by order of SCROGGS, taken out of the grave, his quarters were fixed upon the gates of the City, and his head, at the top of a pole, was set on London Bridge. So proud was SCROGGS of this exploit that he had an account of it written, for which he granted an *imprimatur* signed with his own name. For this, adds Lord CAMPBELL, he probably received a good sum of money.

Dr. LINGARD thus describes him on the bench:—"SCROGGS, a lawyer of profligate habits and inferior acquirements, *acted the part of prosecutor rather than of Judge. To the informers he behaved with kindness, even with deference*, suggesting to them explanations excusing their contradictions, and repelling the imputations on their characters; but the prisoners were repeatedly interrupted and insulted; their Witnesses were brow-beaten from the Bench, and their condemnation was generally hailed with acclamations, which the Court rather encouraged than repressed." The whole of this seems to have been written for the purpose of depicting scenes at the late Trial.

His conduct provoking censure from newswriters and ballad makers, SCROGGS thus excused himself from the Bench, and of course appealed to the Bar as defenders of his scoundrelism :— "As to WAKEMAN'S Trial, I am neither afraid nor ashamed to mention it. I will appeal to all sober and understanding men, *and to the long robe* more especially, who are the best and properest judges in such cases, for the fairness and equity of my carriage on that occasion. For those hireling scribblers who traduce me, who write to eat, and lie for bread, I intend to meet with them another way, for, like vermin, they are only safe while they are secret. And let these vipers—these printers and booksellers, by whom they vend their false and braided ware, look to it: they shall know that the law wants not power to punish a libellous, a licentious press, nor I resolution to put the law in force."

He thus attacked one DANGERFIELD, a Witness called for the Crown ; just as in the recent Trial, the Witnesses for the unhappy Prisoner were pounced upon : "We will not hoodwink ourselves against such a fellow as this, that is guilty of notorious crimes. Such fellows as you are, Sirrah, shall know we are not afraid of you. It is notorious enough what a fellow this is. I will shake all such fellows before I have done with them."

DANGERFIELD : My lord, this is enough to discourage a man from ever entering into an honest principle. SCROGGS, C.J. : What? Do you, with all mischief that hell hath in you, think to have it in a Court of Justice? I wonder at your impudence that you dare look a Court of Justice in the face, after having been made appear so notorious a villain.

While holding assizes in the county, he took every opportunity of proclaiming his slavish doctrines, akin to those of Contempt of Court. Going the Oxford Circuit with Lord Chief Baron ATKYNS, he told the Grand Jury that a petition from the Lord Mayor and citizens of London to the KING for calling a parliament was high treason. ATKYNS, on the contrary, affirmed "that the people might petition the King, and so that it was done without tumult it was lawful." SCROGGS having peremptorily denied this, went on to say "that the KING might prevent printing and publishing whatever he chose by way of proclamation." ATKYNS mildly remarked "that such matters were fitter for parliaments, and that if the KING could do the work of parliaments, we were never likely to have parliaments any more." SCROGGS, highly indignant, sent off a despatch to the King, stating the unconstitutional and treasonable language of Chief Baron ATKYNS. This virtuous judge was in consequence superseded.

Before SCROGGS was himself prosecuted and dismissed from his office with disgrace, he swelled the number of his delinquencies by an attack on the liberty of the press, which was more violent than any that had ever been attempted by the Star Chamber, and which, if it had been acquiesced in, would have effectually established despotism in this country. The object was to put down all free discussion, and all complaints against misrule, by having, in addition to a licensor, a process of *injunction* against printing—to be summarily enforced *without the intervention of a Jury*, by fine, imprisonment, pillory, and whipping. There was then in extensive circulation a newspaper called 'The Weekly Packquet of Advice from Rome, or the History of Papacy,' which reflected severely upon the religion now openly professed by the Duke of YORK, and secretly embraced by the KING himself. In Trinity Term, 1680, an application being made to the Court of Queen's Bench, on the ground that this paper was libellous, SCROGGS, with the assent of his brother Judges, granted *a rule absolute in the first instance* (just as was done in the TICHBORNE proceedings), forbidding the publication of it in future. The editor and printer being served with the rule, the journal was suppressed till the matter was taken up in the House of Commons, and SCROGGS was impeached.

It would have been consolatory to us, says Lord CAMPBELL, in reading an account of the base actions of SCROGGS, if we could have looked forward to his suffering on a scaffold like TRESILIAN, or dying ignominously in the Tower of London like JEFFREYES. He escaped the full measure of retribution which he deserved, but he did not go unpunished.

A charge was now preferred against him before the KING in Council, which alleged, among other things, that at the Trial of Sir GEORGE WAKEMAN "he did brow-beat and curb Dr. TITUS OATES and Captain BEDLOE, two of the principal Witnesses, and encouraged the Jury to disbelieve the said Witnesses by speaking of them slightingly and abusively, and by omitting material parts of their evidence." Reading this, we are reminded of the multitudinous similar acts in the TICHBORNE Case, and cannot refrain from expressing our wonder how strangely Nature reproduces the same man, and repeats the same events.

The KING presided in person ; the Witnesses were constantly interrupted and stopped, and SCROGGS made a witty speech on the subject of his immoralities, which no doubt amused CHARLES II., and judgment was given that the complaints were false and frivolous.

But SHAFTESBURY was not easily diverted from any plan on which he had once entered. He caused a motion to be made in the House of Commons, which even in those corrupt times appears to have been more honest than those that we have recently seen. He was charged with endeavouring to subvert the fundamental laws of the kingdom of England, with maliciously and designingly stopping the course of justice; with illegally suppressing the 'Weekly Packquet' newspaper; with imposing arbitrary fines; with scandalising Witnesses ; and finally, in words not altogether inapplicable to the present state of things, "whereas the said Sir WILLIAM SCROGGS, being advanced to be Chief Justice of the Court of Queen's Bench, ought by a sober, grave, and virtuous conversation to have given a good example to the KING'S liege people, and to demean himself answerable to the dignity of so eminent a station, yet, on the contrary thereof, *he doth by his frequent and notorious excesses and debaucheries*, and his profane and atheistical discourses, daily affront Almighty GOD, dishonour his Majesty, give countenance to and encouragement of all manner of vice and wickedness, and bring the highest scandal on the public justice of the kingdom." We are not told whether SCROGGS entered into an elaborate mitigation of adultery, lying, and embezzlement from the judgment seat : probably he did not reach that elevation of infamy. Parliament was dissolved three days after these Articles were presented. SCROGGS thus escaped ; but within a brief period he was superseded. His disgrace, says CAMPBELL, caused general joy in Westminster Hall, and over all England. Finding no sympathy from his own profession, or from any class of the community, he retired to a country house called Weald Hall, near Brentwood, in Essex. He was considered by the gentry to be without religion and without honour ; while the peasantry, who had heard some vague rumours of his having put people to death, believed that he was a murderer, whispered stories of his having dealings with evil spirits, and took special care never to run the risk of meeting him after dark. After languishing in great misery till the 25th of October, 1683, he expired without a relation or friend to close his eyes. He was buried in the parish church of South Weald ; the undertaker, the sexton, and the parson of the parish alone attending the degraded funeral. He left no descendants ; and he must either have been the last of his race, or his collateral relations, ashamed of their connection with him, had changed their name, for since his death there has been no SCROGGS in Great Britain or Ireland. The word was long used by nurses to frighten children ; and as long as our history is studied, or our language is spoken or read, it will call up the image of a base and bloody-minded villain. Thank heaven, adds Lord CAMPBELL, we have no such men in our generation ; it is better for us to contemplate dull moral mediocrity than profligate eccentricity, however brilliant it may be. We wonder what this learned biographer of the Chief Justices would have written had he lived till now.

SCROGGS.

A rogue, a rogue, a very rogue!
I knew him, ere I heard his brogue;
I knew him, even at the distance
Of fifty miles, without assistance.

And now the wretch before me comes,
I feel a pricking in my thumbs ;
I see it in his brow and eye,
He's quite made up of roguery.

I scarcely can myself restrain,
His roguery's so very plain ;
I'll hang the fellow up at once—
Well—well—I must not be a dunce :

We must observe some outward form,
Or else perchance there'll be a storm ;
'Twas better in the good old times,
At once to punish heinous crimes.

He speaks—Ah! now I hear his brogue,
I'm sure he is a monster rogue;
His loose speech marks the villain plain,
For villainy eats out the brain.

What! what! he's not the rogue, but like him!
The scoundrel! I could almost strike him.
His hands are small—no doubt, no doubt :
He scrapes his hands!—the cheat's found out.

He's dark ; he says the rogue was fair,
You rogue, you've dyed your skin and hair ;
The dark hair is conclusive proof,
That you're a rogue—it's quite enough.

Oh! you have many people living,
To swear you're not the real villain.
Oh! yes—one rogue makes many more ;
There's witchcraft in your roguish lore.

It were a good, cheap plan, methinks,
To try him, if he swims or sinks ;
If he sinks, well—and if he float,
Six yards of cord shall clasp his throat.

Fie! Advocate! oh, fie! oh, fie!
To screen such horrid villainy ;
I wish I could do more than ban—
Fie! Advocate, you wicked man.

E. L.

LORD CHIEF JUSTICE JEFFREYES.

"It is hardly known to the multitude," says Lord CAMPBELL, in his Life of this man, "that this infamous person ever held the Great Seal of England; as from the almost exclusive recollection of his presiding on criminal trials, he has been execrated under the designation of '*Judge Jeffreyes*,' which is as 'familiar in our mouths as household words.' Yet was he Chancellor a considerably longer time than Chief Justice; and in the former capacity, as well as in the latter, he did many things to astonish and horrify mankind. He has been so much abused, that I began my critical examination of his history in the hope and belief that I should find that his misdeeds had been exaggerated, and that I might be able to rescue his memory from some portion of the obloquy under which it labours; but I am sorry to say that, in my matured opinion, although he appears to have been a man of high talents, of singularly agreeable manners, and entirely free from hypocrisy, his cruelty and his political profligacy have not been sufficiently exposed or reprobated, and that he was not redeemed from his vices by one single solid virtue."

The true character of JEFFREYES manifested itself at an early age. With an outward good humour, such as we see in our modern imitators, he was overbearing in temper, and utterly deceitful; so that he acquired an ascendancy over his playmates by coaxing some and intimidating others; and making those most opposed to each other believe that he favoured both. He would take any unfair advantage in their sports and plays; and his father looked with anxiety to the future of so adroit a knave. While yet young, he contracted habits of drunkenness which he never abandoned; and his father said to him, "*Ah! George, George, I fear thou wilt die with thy shoes and stockings on!*"

The Inner Temple had the honour of admitting him as a member on the 19th of May, 1633. He joined what was called the Malcontent Party, and drank on his knees toasts to "the good old cause" of Puritanism, and to "the immortal memory of old NOLL." "The Calves' Head Club," says Lord CAMPBELL, "had not yet been established, or he probably would not have scrupled to belong to it, and to have drunk with devotion the two standing toasts of the brethren—to 'the man in the mask,' and to 'the man who would do it without a mask.'" The Calves' Head Club, as our readers know, commemorated the decapitation of CHARLES I., whom loyal Englishmen looked upon as a Calf, for surrendering himself to LAUD and the Papal reactionaries.

JEFFREYES was called to the Bar on the 22nd November, 1688. At his outset there was no art, however low, to which he would not resort with a view to get on. We are not told whether, like a noted Judge of the present day, he would go to the public-houses on his circuit, and drink with the reporters, with the lawyers and their clerks; but he used to sit in coffee-houses, and order his clerk to come and tell him that company attended him at his chamber; at which he would huff and say, "Let them stay a little; I will come presently"; and thus make a show of business. He was poor, and borrowed money: but we never hear—bad as he was—that he cheated at cards; and that he hired a trap and horse, and immediately sold them to gratify some passing fit of debauchery. If he had done so he probably might not have had an uncle, a wealthy Dean, to buy him out of jail for the misdemeanour or felony, whichever it may be called. The pot companions of JEFFREYES, however, got him briefs. He never spared any assertion that was likely to benefit his client. While a trial was on, he was earnest in it; but when it was over he would recklessly get drunk, as if he never were to have another to conduct. He now left the Malcontent Party, and joined the adherents of the Duke of YORK, whose Solicitor he became. Thus he got to be made Recorder of London; the Duke's influence with the aldermen's wives being at that time considerable. JEFFREYES himself was also a well-looking man, a favourite of loose women and did not stick at trifles. "He had hardly been sworn in," says Lord CAMPBELL, "when, feeling that the Liberals could do nothing more for him, he utterly cast them off, becoming, for the rest of his life, the open, avowed, unblushing slave of the court, and the bitter, persecuting and unappeasable enemy of the principles he had before supported, and of the men he had professed to love."

At the trial of COLEMAN, WHITBREAD, and IRELAND, who were said to be in the Popish Plot, our old friend SCROGGS presided. "Thus, I speak to you," he said to the convicts; "GOD forgive you for what you have done; and I do heartily beg it, though you don't desire I should; for, poor men, you may believe that your interest in the world to come is secured to you by your masses; but do well consider that vast eternity you must ere long enter into, and that great Tribunal you must appear before, where masses will not signify so many groats to you; no, not one farthing. And I must say it, for the sake of those silly people whom you have imposed upon with such fallacies, that the masses can no more save you from the future damnation than they do from a present condemnation. The sentence of the law is," &c.; and then came from his delighted lips the hurdle, the hanging, the cutting down alive, and other particulars, too shocking to be repeated.

The Grand Jury, having several times returned *ignoramus*, to an indictment against one SMITH, for a libel, in respect of some publication, though they were sent out of court to reconsider the finding, he at last exclaimed, "*God bless me from such Jurymen! I will see the face of every one of them, and let others see them also.*" "He accordingly cleared the bar; and, calling the jurymen one by one, put the question to them, and made each of them repeat the word *ignoramus*. He then went on another tack, and addressing the Defendant said, in a coaxing tone, "Come, Mr. SMITH, there are two persons besides you whom this Jury have brought in *ignoramus*, but they have been ingenious enough to confess, and I cannot think to fine them little enough: they shall be fined two pence for their ingenuity in confessing." SMITH made answer, "Sir, my ingenuity hath sufficiently experienced the reward of your severity; and besides, *I know no law commands me to accuse myself*; neither shall I: and the Jury have done like true Englishmen, and worthy citizens, and blessed be GOD for such a Jury!" To this every man will say Amen! JEFFREYES was enraged; he committed poor SMITH, as he could not convict him, till he found bail for good behaviour.

Of the character acquired by JEFFREYES while Chief Justice of Chester some idea may be formed from the speech, in Parliament, of Mr. BOOTH, afterwards Earl of WARRINGTON, in which he denounces the profligate conduct of JEFFREYES in very severe terms. "The county for which I serve is Cheshire, which is a county palatine, and we have two Judges peculiarly assigned to us by his Majesty; our Puisne Judge I have nothing to say against him, for he is a very honest man for aught I know; but I cannot be silent as to our Chief Judge, *and I will name him*, because what I have to say will appear more probable. His name is Sir GEORGE JEFFREYES, who, I must say, behaved more like a jack-pudding, than with that gravity which becomes a Judge. He was mighty witty upon the prisoners at the Bar! he was very full of his jokes upon people that came to give evidence, not suffering them to declare what they had to say in their own way and method, but would interrupt them because they behaved themselves with more gravity than he; and in truth the people were strangely perplexed when they were to give in their evidence; but I do not insist upon this, nor upon the late hours he kept up and down the city; it is said he was every night drinking till two o'clock, or beyond that time, and that he went to his chamber drunk; but this I have only by common fame, for I was not in his company—I bless GOD I am not a man of his principles or behaviour—but in the mornings he appeared with the symptoms of a man that over-night had taken a large cup. But that which I have to say is the complaint of every man, especially of them that had any law-suits. Our Chief Justice has a very arbitrary power in appointing the assize when he pleases, and this man has strained it to the highest point; for whereas we were accustomed to have two assizes, the first about April or May, the latter about September, it was this year, as I remember, the middle of August before we had any assizes, and then he despatched business so well that he left half the causes untried, and to help the matter, has resolved that we shall have no more assizes this year." *

Even in those dark days it will be seen that there was no Speaker BRAND to prevent this language. Unacquainted as our forefathers were with the "blessings of modern education," they were sturdy enough to have sent such a Speaker to the gallows, if he had dared to do as BRAND has lately done. We want one or two Mr. BOOTHS in the House of Commons now; and when the People are a little better instructed in their past history they will send them there.

"In trials at Nisi Prius," says Foss, "he was sometimes paid in his own coin"; the Englishmen of those bygone days did not dread Judges. Cross-examining a sturdy countryman clad in a leathern doublet, he bawled out, "You fellow in the leathern doublet, pray what have you for swearing?" The man looked steadily at him and said, "Truly, sir, if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I." On another occasion a Witness having in the course of his evidence frequently used the terms lessor and lessee, assignor and assignee, JEFFREYES exclaimed, "I question if you know what a lessor or lessee is, for all your formal evidence." "Yes, Sir GEORGE, I do," replied the Witness; "and I give you this instance: if you nod at me you are the nodder, and if I nod at you, you are the noddee." When he was Recorder of London, a case was brought before him as to the payment for music at a wedding. One of the Witnesses, on being called a fiddler, appeared much offended, and afterwards described himself as a "musitioner." JEFFREYES asked him what difference there was between a "musitioner" and a fiddler? "As much, sir," said the man, "as there is between a pair of bagpipes and a *recorder*." And a Witness with a long beard giving evidence that was displeasing to him, he said, "If your conscience is as large as your beard, you'll swear anything." The old man replied, "My lord, if your lordship measures consciences by beards, your lordship has none at all." It should be added that JEFFREYES was a close shaven man, like COCKBURN.

At the trial of Lord WILLIAM RUSSELL, the office of Lord Chief Justice being vacant, JEFFREYES strove hard to please the Court, and get the place. The prisoner had been present at a meeting of the conspirators, when there was a consultation about seizing the KING; but the prisoner insisted that he had come in accidentally, that he had not engaged in the conversation, and had no knowledge of their project. The aspirant for office saw in a moment where

* CHANDLER'S Debates.

was the pinch of the Case; and the Attorney-General, who was examining Colonel RUMSEY, being contented with asking, "Was the Prisoner at the Bar present at the debate?" and receiving the answer, "Yes," JEFFREYES started up, and took the Witness into his own hands. He clinched the matter by the following question: "Did you find him averse to it, or agreeing to it?" The Witness of course answered in the affirmative, according to the suggestion of JEFFREYES; and the latter, with a malignant glance of triumph at RUSSELL, exclaimed: "If my Lord RUSSELL now pleases to ask any questions he may." The Prisoner was condemned, and JEFFREYES received the price of his blood in the office of Chief Justice of England.

ALGERNON SIDNEY, having written some speculations on Government, which lay in manuscript, JEFFREYES held *scribere est agere*, writing is an act; and decided that it was an act of treason. He accordingly had the satisfaction of condemning SIDNEY to death. A day or two after he went to a party in the city, and sat till midnight, smoking, drinking and talking nastiness. "Not only was he," says FOSS, "unfeeling and indecorous towards the prisoners, but he bullied and threatened the Counsel practising in this Court." Thus, while WARD (afterwards Chief Baron) was making a very temperate statement in a cause, and endeavouring to show that there was probable cause for an arrest, JEFFREYES rudely interrupted him, telling him that he did not understand the question at all; but that he launched out in an ocean of discourse that was wholly wide of the mark, and desired him not to make excursions *ad captandum populum* (to catch the people), for he would suffer none of his enamels, nor his garnitures. He took every opportunity also of brow-beating another eminent Counsel, RICHARD WALLOP. When the latter, on the Trial of BRADFORD and SPEKE, in 1684, for asserting that the Earl of ESSEX was murdered in the Tower, persisted in asking some question of the

FACES IN COURT.

Witness, which JEFFREYES disapproved, his lordship exclaimed, "Now, Mr. WALLOP, be as angry as you will, you shall not hector the Court out of their understandings"; and upon Mr. WALLOP'S saying, "I refer myself to all that hear me, if I attempted such a thing as to hector the Court," he was checked thus intemperately by the Judge: "Refer yourself to all that hear you! refer yourself to the Court. It is a reflection on the Government, I tell you, the question is; and you shan't do any such thing while I sit here by the grace of God, if I can help it." And, again: "Pray behave yourself as you ought, Mr. WALLOP. You must not think to huff and swagger here." On the Trial, in the same year, of THOMAS ROSEWELL for high treason, the Chief Justice took another opportunity of showing his prejudice against the Counsel. Seeing him in Court, he asked him what business he had there? and on his saying that he only came from curiosity to hear the Trial, JEFFREYES declared that it should not proceed while he remained. This is something like COCKBURN turning Lord RIVERS and Mr. ONSLOW out of the Queen's Counsel's seat, and out of Court; and ordering the eldest son of the Claimant not to be allowed to be near him in Court, lest the spectators should see the marvellous likeness which he bears to the coloured Daguerreotype of the ROGER TICHBORNE of 1854.

"The next exhibition," says Lord CAMPBELL, "in the Court of King's Bench, which particularly pleased JEFFREYES, and horrified the public, was the condemnation of Sir THOMAS ARMSTRONG. This gentleman was outlawed while beyond the seas, and, being sent to Holland within the year, sought, according to clear law, to reverse the outlawry. When brought up to the bar, ARMSTRONG was accompanied by his daughter, an interesting young woman. When the Chief Justice, in utter violation of all right, over-ruled his plea, and pronounced sentence of death, Miss ARMSTRONG cried out, 'My lord, I hope you will not murder my father.' CHIEF JUSTICE 'Who is this woman? Marshal, take her into custody. Why, how now? Because your relative

is attainted of high treason, must you take upon you to tax the Courts of Justice for murder, when we grant execution according to law? Take her away.' DAUGHTER: 'May God Almighty's judgment light upon you.' CHIEF JUSTICE: 'God Almighty's judgments will light upon those that are guilty of high treason.' DAUGHTER: 'Amen, I pray God!' CHIEF JUSTICE: 'So say I. I thank God I am clamour-proof.' He then ordered the daughter into prison. SIR T. ARMSTRONG: 'I ought to have the benefit of the law, and I demand no more.' CHIEF JUSTICE: 'That you shall have, by the grace of God. See that execution be done on Friday next, according to law. You shall have the full benefit of the law.' ARMSTRONG was hanged, embowelled, beheaded, and quartered accordingly." It was on this occasion that his Majesty took a valuable diamond ring from his finger, and gave it to the Chief Justice in acknowledgment of his services. This ring, BURNET says, was thereupon called his Bloodstone.

Next came the trial of RICHARD BAXTER, prosecuted for a libel because, in a book on Church government, he had reflected on the Church of Rome in words which might be applied to the Bishops of the Church of England. He prayed, on account of ill-health, that his trial might be postponed. JEFFREYES shouted, "Not a minute more to save his life. We have had to do with other sort of persons, but now we have a Saint to deal with; and I know how to deal with Saints as well as Sinners. If he stood by OATES in the pillory, I would say, two of the greatest rogues and rascals in the kingdom stood there together. RICHARD! RICHARD! thou art an old fellow, and an old knave. Thou hast written books enough to load a cart. Every one is as full of sedition—I might say treason—as an egg is full of meat. Gentlemen, for GOD'S sake, do not let us be gulled twice in an age." The defendant was, of course found guilty. The records of the time do not say whether the Bar tittered with delight at this disgraceful language from the Bench, nor what sum the Jurymen were paid for their perjury. We ourselves believe that, in those far-off days, they were gentlemen of honour, who would be ashamed of what England saw from its Junior Bar on a recent occasion.

JEFFREYES was rewarded with the common premium for villainly—a Peerage. His patent reminds us of the language lately used by the Public Liar or Orator of Cambridge—falsehood, and the most fulsome adulation. It actually recited *the justice and guardian protection which he has shown to our subjects while manfully and faithfully administering the laws*, and says that *the essence of his virtues were so remarkable, that he was thought worthy to be made an English Peer.* We should like to see Lord FORGERY'S patent, and compare its language with this; but, after the Public Liar at Cambridge University, what will not the sycophants of all periods be capable of inventing?

Lord CAMPBELL describes JEFFREYES' journey through the West of England, to try the unhappy persons engaged in MONMOUTH'S rebellion; his judical murder of Mrs. LISLE, whom he thrice sent back to a doubting Jury, and finally forced them into a TICHBORNE verdict. The lady was beheaded, but the attainder against her was afterwards reversed by Act of Parliament, on the ground that it "was injuriously extorted by the menaces and violence and other illegal practices, of GEORGE Lord JEFFREYES, Baron of Wem, then Lord Chief Justice of the King's Bench." We wonder whether it is in the books of fate that a similar reversal and condemnation awaits the TICHBORNE verdict? Parliament cannot follow a better precedent.

"Commencing at Winchester," says Foss, "and terminating at Wells, the unfortunate Prisoners at each place that was visited met with the full rigour of the law; and, taking even the most favourable account, that of the historian LINGARD, the willing apologist of all the acts of this reign, there were 330 executed as felons and traitors; above 800 were transported for ten years to the West Indies; besides many who were whipped and imprisoned. With indecent haste, all those who were convicted at the Trial suffered in the course of twenty-four hours."

Bills of indictment for high treason were found by the hundred, often without evidence—the miserable Grand Jury being afraid that, if they were at all scrupulous, they themselves might be brought in as aiders and abettors. Hearing that Lord Keeper GUILDFORD had breathed his last, JEFFREYES, in the hope of obtaining his place, resorted to a trick. He held out a sort of promise that if the prisoners would plead guilty, it would be better for them. He was anxious to get away to London to secure the Great Seal. He began on a Saturday morning with a batch of thirty. All were convicted but one. He sentenced thirteen to be hanged on the Monday; the rest on Tuesday. To one of them, who objected to the competency of a Witness, he said, "*Villain! Rebel! methinks I see thee already with a halter about thy neck!*" On the Monday morning, 292 received judgment to die; and of these, 74 were actually hanged. "While the whole country," says Lord CAMPBELL, "was covered with the gibbeted quarters of human beings, the towns resounded with the cries of men, and even of women and children, who were cruelly whipped for sedition, and on the ground that by words or looks they had favoured the insurrection. JOHN INTCHIN, a mere boy, was sentenced to be whipped through every market town in the country for seven years—or a flogging once a fortnight for seven years. At Exeter he hanged 37 persons, while upwards of 200 were transported, whipped, or imprisoned. In Somersetshire he left 143 for execution; and transported 284 for life. He took large bribes for saving the lives of some; and hastened to London, where he was at once made Lord Chancellor by King JAMES II.; the 'London Gazette' proclaiming his "many eminent and faithful services," though murders would have been the most proper word. The public and the profession were much shocked to see such a man at the head of the law; but, adds Lord CAMPBELL, as soon as he was installed in his office, there were plenty ready enough to gather round him, and suppressing their real feelings, *to load him with flattery, and solicit him for favours!!* How strange the human nature should thus always manifest itself in its applause of these Scarlet-coloured Beasts, when they sit high upon their judgment seats!

With the flight of JAMES came the ruin of JEFFREYES. Disguised as a sailor, he got to Wapping, meaning to set sail for Hamburg, and was luxuriating over a pot of ale at the 'Red Cow,' at Anchor and Hope Alley, near King EDWARD'S stairs, when a little scrivener recognised him. A mob collected; he was taken before the Lord Mayor, on a charge of high treason. He was sent to the Tower, where, after a few weeks passed in great misery of spirit, he died, April 19th, 1689. Some said that he killed himself with brandy, dying like a furious wild beast in madness. He lies buried under the Communion Table of St. MARY Aldermanbury. Mr. Justice FOSTER said, "he was the very worst Judge that ever disgraced Westminster Hall." The melancholy moral to be drawn from such a career is a feeling of indignation and disgust, that such persons *can* be tolerated in England, simply because they happen to be on the Bench. It is remarkable to trace the resemblance which all these wicked varlets bear to each other. In looking over the lives of bad Judges, one is at once struck by their affinity, in most things; so that one might almost fancy they were but revivifications, century after century, of the first original evil magistrate. JEFFREYES was noted, even from the first, for hypocrisy, artfulness, and cunning. We know how his modern imitators possess the same odious vices. So they are like him in habits of drunkenness, and pot-house predilection. Poor, and almost penniless, they borrowed money, or begged it, or cheated at cards for it, wherever they could. In some respects, however, even JEFFREYES was better. We do not read that he was a common profligate, seducer, and adulterer; living openly with little tradesmen's wives, and polluting the Court and the Army with the presence of his illegitimates. He did not stab any "unfortunate" in a house of ill fame at Bristol; nor was he perpetually haunted in moments of illness by her bleeding ghost, so that he required large doses of brandy to lull his agonised conscience. He never fought any sham duels, the pistols being loaded only with powder; nor was he ever within an inch of being hanged or transported as a felon, for the fraudulent sale of a carriage which he hired. JEFFREYES, SCROGGS, NORBURY, and ELLENBOROUGH, were bad enough: but they were, as far as we know, free from these grand recommendations; while we should search in vain through nearly all their vagaries on the Bench, for an apology for adultery, lying, and embezzlement.

BAXTER AND JUDGE JEFFREYES.

The celebrated RICHARD BAXTER, in his paraphrase on the New Testament, published in 1685, wrote several sentences which were thought to reflect on the clergy of the established Church, for which he was tried before Lord Chief Justice JEFFREYES and three other judges.

MACAULAY tells us that, when the Trial came on at Guildhall, a crowd of those who loved and honoured BAXTER filled the Court. Two Whig barristers of great note, POLLEXFEN and WALLOP, appeared for the Defendant. POLLEXFEN had scarcely begun his address to the jury, when the Chief Justice broke forth: "POLLEXFEN, I know you well; I will set a mark on you. You are the patron of the faction. This is an old rogue, a schismatical knave, a hypocritical villain. He hates the liturgy. He would have nothing but long-winded cant without book; and then his lordship turned up his eyes, clasped his hands, and began to sing through his nose. POLLEXFEN gently reminded the Court that his late Majesty had thought BAXTER deserving a bishopric. "And what ailed the old blockhead, then," cried JEFFREYES, "that he did not take it?" His fury now rose almost to madness. He called BAXTER a dog, and swore that it would be no more than justice to whip such a villain through the whole city. WALLOP interposed, but fared no better than his leader. "You are in all these dirty cases, Mr. WALLOP," said the Judge. "Gentlemen of the long robe ought to be ashamed to assist such factious knaves." The advocate made another attempt to obtain a hearing, but to no purpose. "If you do not know your duty," said JEFFREYES, "I will teach it you." WALLOP sat down, and BAXTER himself tried to put in a word, but the Chief Justice drowned all expostulations in a torrent of ribaldry and invective, mingled with scraps of HUDIBRAS. "My lord," said the old man, "I have been much blamed by Dissenters for speaking respectfully of bishops." "BAXTER for bishops," cried the Judge; "that's a merry conceit, indeed! I know what you mean by bishops—rascals like yourself—Kidderminster bishops—factious, snivelling Presbyterians." Again BAXTER essayed to speak, and again JEFFREYES bellowed, "RICHARD! RICHARD! dost thou think we will let thee poison the Court? RICHARD, thou art an old knave. Thou hast written books enough to load a cart, and every book as full of sedition as an egg is full of meat. I'll look after thee!" . . . . The noise of weeping was heard from some of those who surrounded BAXTER. "Snivelling calves!" said the judge. The

Chief Justice would hear nothing. "Does your lordship think," said BAXTER, "that any jury will convict a man on such a Trial as this?" "I warrant you, Mr. BAXTER," said JEFFREYES, "don't trouble yourself about that." JEFFREYES was right. The Sheriffs were the tools of the Government. The Jury, selected by the Sheriffs from among the fiercest zealots of the Tory party, conferred for a moment and returned a verdict of guilty. "My lord," said BAXTER, as he left the Court, "there was once a Chief Justice who would have treated me differently." He alluded to his learned and virtuous friend Sir MATTHEW HALE. "There's not an honest man in England," answered JEFFREYES, "but looks upon you as a knave."

With the exception that his language, in that age of coarse speaking, is a little less polished, the conduct of JEFFREYES in the Trial of BAXTER is very much like that of COCKBURN in the Trial of TICHBORNE, and the conduct of the Jury, in both Trials, is precisely the same; as in both they were picked, and similar causes produce similar effects. E. P. M.

JEFFREYES AND MR. ROSEWELL.

THOMAS ROSEWELL, M.A., a celebrated divine, not more eminent for his learning than for his piety and modesty; a preacher distinguished for judgment, eloquence, and study; a most diligent and skilful interpreter of the sacred volume.

1684 On the 14th of September, 1684, he expounded the 20th chapter of Genesis in his chapel at Rotherhithe. Some malicious informers who had artfully introduced themselves into his congregation, by shamefully misrepresenting what he said, laid an information against him for High Treason; upon which he was apprehended and carried before Judge JEFFREYES, who demanded of him where he preached September 14th? Mr. ROSEWELL said in *Latin*, "That he hoped his lordship would not insist upon his answering that question, as he might thereby accuse himself." JEFFREYES flew into a violent passion, and said: "He supposed he could not speak another sentence in Latin if it were to save his neck." Mr. ROSEWELL, thinking it more civil to answer in another language, spoke in Greek. The Judge seemed thunderstruck; but presently, in a rage, ordered the messenger to take him away. After being detained in a public-house till past eleven at night, the Judge's order came for committing him to the Gatehouse. On the 25th of October, 1684, he was arraigned at the bar of the King's Bench. The seat of justice was at that time degraded by one of the greatest monsters that have appeared in human form. The infamous JEFFREYES treated him with the utmost indignity during the Trial; and in a fulsome harangue to the Jury, persuaded them to find him guilty upon the evidence of some perjured informers, suborned for the express purpose of taking away his life. After his conviction, Sir JOHN TALBOT, who had been present at the Trial, went to the King and told him plainly, "that he had seen the life of a gentleman and a scholar dependent on such evidence as he would not hang his dog on;" and added, "Sire, if your Majesty suffers this man to die, we are none of us safe in our houses." Whilst the King was listening to Sir JOHN'S narrative, JEFFREYES came in, and in a transport of joy related the signal services which *he* and the *Jury* had rendered his Majesty, in convicting Mr. ROSEWELL. But the King *cooled his ardour* by telling him that Mr. ROSEWELL should *not die*; but that he must contrive some way to bring him off. Counsel was assigned Mr. ROSEWELL, to plead the insufficiency of the indictment in arrest of judgment, the consideration of which being adjourned to the following term, the King in the meantime granted him a pardon, and he was discharged. Mr. ROSEWELL outlived his trial about seven years, and died Feb. 14th, 1692, in the 62nd year of his age.—Vide "Bunhill Memorials," by the Rev. J. A. JONES, pp. 240-241; and for further information on the subject see PALMER'S "Nonconformist's Memorial," and WILSON'S "History of Dissenting Churches."

Pending the disturbances on the Exclusion Bill of the Duke of YORK, the Ministry of CHARLES II. consented to hang an Alderman of London to intimidate the citizens from continuing their spirited and honourable opposition, and as Sir ROBERT CLAYTON had made himself conspicuous in the presentation of an address to the King by the Lord Mayor, whom he attended with a Mr. BETBEL and a Mr. CORNISH, it was determined he should be the one to be hanged—JEFFREYES, however, was appointed Recorder of London by Sir ROBERT CLAYTON'S interest, so he was spared and Mr. Alderman CORNISH was hanged in his stead.

A learned and ingenious Collector in London has in his posession the Patent for creating JEFFREYES Earl of FLINT, not as corresponding to his general character, but as having an estate in the county of Flint.

JEFFREYES early distinguished himself by his brutal treatment of Prisoners, and of practitioners of the Law whom he disliked. There is a singular advertisement lately published, "the Trial of Mr. PAPILLON," by which it is manifest that the then Lord Chief Justice (JEFFREYES) had neither learning, law, nor good manners, but more impudence than ten carted whores (as was said of him by King CHARLES II.) in abusing all those worthy citizens who voted for Mr. PAPILLON, and Mr. DUBOIS, calling them a parcel of factious, pragmatical, sneaking, whoring, canting, snivelling, prick-eared, crop-eared, atheistical fellows, rascals and scoundrels, as in page 19, and other places of the said trial may be seen." Yet JEFFREYES amidst all his cruelties was a lover of buffoonery. Sir J. RERESBY says "that he once dined with JEFFREYES when he was Lord Chancellor, and that the Lord Mayor was a guest with other gentlemen: that JEFFREYES drank deep at dinner, and called for MOUNTFORT, one of his gentlemen, who had been a comedian, and an excellent mimic, to divert the company, and, adds Sir JOHN, he made MOUNTFORT plead before him in a feigned cause, during which he aped all the great lawyers of the age in their tone of voice and in their action and gesture of body."

LORD KENYON.

A serious obstacle to the dignified discharge of his judicial duties arose from his hasty and ungovernable temper. He is said to have surprised his friends, for a few weeks after taking his seat as Chief Justice, with a show of courtesy; but he soon gave up the unequal contest, and his brother judges, the bar, and the solicitors were by turns the victims of his choler. We have the following account of his demeanour in Court, from a barrister who practised under him all the time he was Chief Justice:—

The supercilious reception which he gave to the opinions of the other judges was not that merely of neglect, it bordered on contempt. He predominated over them with high ascendancy. They very rarely differed from him, if they did their opinions were received with a coldness which stooped not to reply, or, if noticed, were accompanied with angry observation. He was irritated by contradiction, and impatient even of an expression of doubt of the infallible rectitude of what he had delivered as his judgment. In differing from his predecessors he used no soft or measured language. Having occasion to contravene a dictum of Chief Justice HOLT, "he wondered that so great a judge should have descended to petty quibbles to overturn law and justice," and when a saying of Lord MANSFIELD was cited respecting the right to recover a total loss on a valued policy, with a small interest actually on board, he declared that "This was very loose talking, and should not be ratified by him." When a new trial was moved for against a ruling of his own, on the ground of misdirection, he would scarce give time to his colleagues to deliberate together, but at once burst out, "If the rest of the Court entertain any doubt, the Case may be farther considered; but I am bound to give the same opinion I formerly gave—not because I gave that opinion before, but because I am convinced by the reasoning that led to it." Whenever his brother Judges ventured to differ from and overrule his decisions (there were scarcely a dozen cases in the course of fourteen years which called forth this exhibition of fortitude), his manner evinced as much testiness as if he had received a personal affront. If a word escaped from a Counsel, not quite in accordance with his sentiments, his temper blazed into a flame which could scarcely be subdued by humility. On these occasions he gave loose to an unchecked effusion of intemperate expression, and his language was not chastened by the strict rule of good breeding. Mr. LAW, when leader of the Northern Circuit, moved rather pertinaciously for a new trial. Lord KENYON thus concluded his judgment: "You will take nothing by your motion but the satisfaction of having been hired to read your brief once more." Nor while thus offensive to those more advanced in the profession, could he claim as a set-off the merit of being gracious and encouraging to the junior portion of the Bar. An irregular application, though it proceeded from inexperience only, was received without the indulgence due to it; if made by the more experienced, was received with contumely. He would say, "You know you cannot succeed. You do not expect to succeed." . . . Such was the general opinion respecting the infirmity of his temper, that the following anecdote was circulated and believed, although the epigrammatic point and rudeness which it imputes to GEORGE III. were equally at variance with the character of that royal personage:—Lord KENYON being at the *levée*, after an extraordinary explosion of ill-humour in the Court of King's Bench, his Majesty said to him, "My Lord Chief Justice, I hear that you have lost your temper, and from my great regard for you, I am very glad to hear it, for I hope you will find a better one."

. . . The first case that came before him, arising out of the revolutionary movement, was an *ex officio* information by the Attorney-General against DUFLEUR and LLOYD, two prisoners confined for debt in the Fleet Prison, charging them with a conspiracy to escape and to subvert the Government, because they had affixed upon the gate of the prison a paper containing the following "ADVERTISEMENT: This House to let; peaceable possession will be given on or before the first of January, 1793, being the commencement of the first year of liberty in Great Britain."

This pasquinade against imprisonment for debt, composed for the amusement of the debtors, the Chief Justice *gravely treated as a seditious libel;* and the Defendants, being found guilty, were sentenced to stand in the pillory.

The trial and punishment of JOHN FROST, the attorney, were still more discreditable. While in a coffee-house, under the excitement of wine, he was overheard to use some indiscreet expressions respecting the French Republic and a monarchical form of government. Notwithstanding an admirable defence by ERSKINE, he was found guilty of sedition; and the senior Puisne Judge having pronounced sentence "that he should be imprisoned six months in Newgate, that he should stand on the pillory at Charing Cross, and find sureties for his good behaviour for five years," Lord Chief Justice KENYON added, with great

eagerness, "and also be struck off the roll of attorneys of this Court," whereby he was to be rendered infamous, and to be irretrievably ruined, so that death would have been really a milder sentence.

On another occasion JOHN HORNE TOOKE, taking advantage of the Chief Justice's hasty temper, succeeded in acting such a scene of insolence as no other Judge would have endured. At the Westminster election, in 1788, Mr. FOX, having a large majority on the poll, was returned as duly elected, but HORNE TOOKE, the unsuccessful candidate, presented a petition against him. This being referred to a Select Committee, under the GRENVILLE Act was voted "frivolous and vexatious." Mr. FOX was thus entitled to his costs, which were taxed at £198 2s. 6d., and payment of this sum being refused, an action was brought to recover it. The statute provided that, on the Trial of such an action, no evidence should be necessary or receivable beyond the resolution of the Committee, and the taxation of costs verified by the signature of the Speaker of the House of Commons. HORNE TOOKE now appeared as his own Counsel. ERSKINE, for the Plaintiff, that he might give his opponent no topics to dilate upon, merely said, with his usual discretion, "I am forbidden by the Act of Parliament to enter into any discussion of the merits of this case, or anything relating to them, I will therefore only put in the statutable evidence to entitle Mr. FOX to your verdict for the sum of £198 2s. 6d." This evidence he gave in the course of two minutes, and said, "This, my lord, is my case.

Lord KENYON, although he had been told that the Defendant was to attend as his own Counsel, and to make "*a terrible splash*," said in a sharp, contemptuous tone, "Is there any defence?"

HORNE TOOKE (taking a pinch of snuff, and looking round the Court for a minute or two): There are three efficient parties engaged in this trial—you, Gentlemen of the Jury, Mr. FOX, and myself—and I make no doubt we shall bring it to a satisfactory conclusion. As for the Judge and the crier, they are here to preserve order; we pay them handsomely for their attendance, and in their proper sphere they are of some use; but they are hired as assistants only; they are not, and never were, intended to be the controllers of our conduct. Gentlemen, I tell you there is a defence, and a very good defence, to this action, and it will be your duty to give effect to it.

He then began a long narrative of the last Westminster election, and without interruption had come to what he called the financial part of it, stating that Lords of the Treasury were expected to pay £200 apiece, and those in higher situations more, according to their salaries. At last Lord KENYON burst out:—

"Mr. HORNE TOOKE, I cannot sit in this place and hear great names and persons in high situations calumniated and vilified—persons who are not in this cause; persons who are absent, and cannot defend themselves. A Court of Justice is not a place for calumny; it can answer no purpose; you must see the impropriety of it, and it does not become the feelings of an honourable man."

HORNE TOOKE (again taking snuff): Sir, if you please, we will settle this question between us now in the outset, that I may not be liable to any more interruptions.

CHIEF JUSTICE: Lord LOVATT brought forward offensively the names of persons of great respectability, and he was stopped by the House of Lords. The Chancellor informed him that it was indecent to do so, and that a man of his station ought to refrain from such things. You are in the wrong path, Mr. HORNE TOOKE.

HORNE TOOKE: I am persuaded that I shall be able very easily and very shortly to satisfy you that I am not in the wrong path, and it is more desirable that I should do so now, because it is the path which I most certainly mean to pursue, and will not be diverted from. You know (at least you ought to know), and I acknowledge, that if, under the pretence of a Defence in this cause, I shall wantonly and maliciously say or do any word or thing which would be punishable by the laws of the land if said or done wantonly and maliciously anywhere else, I shall be equally liable to prosecution and punishment by the same laws and in the same manner, for what I shall say here. But, Sir (taking another pinch of snuff, and lowering his voice, so as effectually to fix the attention of the audience), you have made use of some words which I am willing to believe you used in a manner different from their usual acceptation. You spoke of *calumniating* and *vilifying*. Those words, Sir, usually include the notion of *falsehood*. Now, I presume you, Sir, did not mean them to be so understood. I am sure you did not mean to tell the Jury that what I said was *false*. By *calumny* you only meant something *criminatory*—something injurious to the character of the person spoken of—something that he would not like to hear, whether true or false.

CHIEF JUSTICE: Certainly, Mr. HORNE TOOKE; certainly.

HORNE TOOKE (with an affectation of good nature): Well, I thought so; and you see, I am not desirous to take advantage of the words to impute to you any wrong meaning or intention; because, had you really intended *falsehood* in the word *calumny* your lordship would have grossly calumniated me. I have spoken nothing but the truth, as, I believe, you know, and which I am able and willing to prove. In one thing I go farther than you do, and am stricter than you are. I think it hard that any persons, whether in a cause or out of a cause, should at any time *unnecessarily* hear what is unpleasant to them, though true. This rule I mean to observe. At my peril I shall proceed, and I expect to meet with no farther interruption from your lordship.

Having thus gained a complete mastery over the Chief Justice, he proceeded to waste the public time most shamefully, and to make many observations which ought to have been stopped, and with discretion and firmness might easily have been stopped by the Judge. Thus he ridiculed the prevailing notion of "the independence of the Judges":—"When anything peculiarly oppressive is nowadays to be done, we have always a clatter made about the *judicial independence* with which we are now blessed. My own belief is that the Judges are now much more dependent on the Crown, and much less dependent on the People than in former times, and, generally speaking, they were certainly more independent in their conduct. They then sat on the bench, knowing they might be turned down again to plead as common advocates at the bar; and, indeed, it was no uncommon thing in those days to see a counsel at the bar brow-beaten and bullied by a Chief Justice on the bench, who in a short time after was to change places with the counsel, and to receive in his own person the same treatment from the other in his turn. Character and reputation were then of consequence to the judges; for if they were not well esteemed by the public, they might be reduced to absolute destitution; whereas if they were sure of being well employed on returning to the bar, dismissal from their poorly-paid offices was no loss or discredit, and they might set the Crown at defiance. Now they are completely and for ever independent of the People, and from the Crown they have everything to hope for themselves and their families. Till the corrupt reign of JAMES II. no common law Judge was ennobled. Chief Justices COKE and HALE, infinitely greater lawyers and abler men than any of their successors in our time, lived and died commoners. Who was the first judicial peer? The infamous Judge JEFFREYES. But in his campaign in the West, and on other occasions, he had done something to deserve and to illustrate the peerage. Nowadays the most brilliant apprenticeship to the trade of a peer is to carry a blue bag in Westminster Hall. This suddenly leads to riches, and the lawyer, suddenly rich, is made a baron; whereas the fact of some particular individual of suspicious character being all of a sudden flush of money who was never known to have any before, often in the good old times led to the certain detection of the thief."

He then, to show how badly justice was administered, told a long story of a prosecution which he had instituted against some rioters at the Westminster election, being defeated by the single circumstance of his Counsel having entered the Court at a few minutes after nine in the morning, the Chief Justice having ordered them all to be acquitted for want of prosecution. Mr. GARROW here interposed, and by stating the true facts of the case, showed that Mr. TOOKE, his Counsel, attorney, and witnesses, had all been guilty of gross negligence, and that the Chief Justice had shown upon that occasion great patience and indulgence. H. T.: "There can be no doubt at all but that your lordship will always find someone in your own Court willing and ready to get up and recommend himself to your favour by a speech in your defence. I should have been surprised if it had not been the case now; but I must rather thank Mr. GARROW, for he has given me time to breathe awhile." C. J.: "I want no defence, sir; I want no defence, no defence. What has been said against me rather excites my compassion than my anger. I do not carry about me any recollection of the trial alluded to, or any of its circumstances." H. T.: "I cannot say that I *carry about me anything* in consequence. I *carry about me* something *less*, by all the money which I took out of my pocket. Although Mr. GARROW has jumped up to contradict me, the affair happened exactly as I stated it. I heard him with much pleasure, for, as I said, I wanted to breathe. But we may have a different House of Commons, to consist of the real representatives of the people, of whom I may happen to be one, and I pledge myself now that I will, in my place there, call you, my lord, to a proper account for your conduct that day, and Mr. GARROW may reserve his justification of your lordship's conduct till that time, when I fear you will stand greatly in need of it. Now, gentlemen, having proved to you how a Judge may be made courteous and quiet, and may be taught to confine himself to the discharge of his proper duties in this place, I shall conclude by asking you, who alone have anything to do with the verdict, whether you think it fair that I should have to pay the costs incurred by Mr. FOX as candidate for Westminster, and you will well and truly try that which is the true and the only issue between us." C. J.: "Gentlemen, you are bound by your oaths well and truly to try this cause, and the question is, whether by the law of the land the Defendant is bound to pay the Plaintiff this sum of £198 2s. 6d. Now, Gentlemen, by the law of the land, if the Petitioner refuses to pay the costs of an election petition, voted frivolous and vexatious, when duly taxed as the Act directs, he may be brought before a Court of Justice, and compelled to do so. If you believe the evidence (which is not contradicted), you have such a case before you, and you will 'well and truly have tried this cause' by finding a verdict for the Plaintiff for the sum demanded."

Lord KENYON is said to have been a great favourite with common juries, and according to the slang of Westminster Hall, always *to have carried off the verdict*. This was said to be because

"he never fired over their heads, and he knew how to hit the bird in the eye." But he never combated the prejudices of the jury. He never encouraged that universal prejudice of the lower orders against attorneys, by which I have frequently seen the administration of justice perverted. Although bred in an attorney's office, and long aspiring no higher than to be an attorney, he seemed to think the whole order pettifoggers, and their occupation almost necessarily disreputable. Instead of restricting his animadversions to peccant individuals, he extended an angry suspicion to a whole class, containing many men as honourable as himself, and much his superiors in education and manners. He talked of striking an attorney off the rolls as he might of dismissing a footman who had offended him. A naval officer having been arrested at a ball, Lord KENYON at once jumped to the conclusion that it must have been by the orders of the Plaintiff's attorney, saying that "it must be a matter for consideration whether a practitioner who had so misconducted himself ought to remain on the rolls of the Court." When a trial, expected to last the whole day, had unaccountably gone off, so that the following causes were struck out, the attorneys not having their witnesses in attendance, he advised that actions should be brought against all the attorneys for negligence.

"This hatred of dishonest practices," says a barrister who attended his Court, "had lit up a flame of indignation in his breast, and it was an *ignis fatuus* which led him into error. He gave too easy credit to accusations, and formed an opinion before he suffered his judgment to cool. He decided while under the influence of a heated temper, and often punished with unreflecting severity. The effect of this intemperate mode of administering justice my memory recalls with painful recollection in the case of a Mr. LAWLESS, an attorney and an honourable member of that profession. He was involved in the general and groundless proscriptions of the day. Complaint was made to the Court against him for some imputed misconduct, grounded on an affidavit which the event proved was a mass of misrepresentation and falsehood; but it being on oath and the charges serious, it was thought sufficient to entitle the party applying to a rule to show cause why Mr. LAWLESS should not answer the matters of the affidavit. Natural justice would point out, and the practice of the Court was conformable to it, that he should be heard in answer before he was convicted. For that purpose a day is given by the rule on which the party is to show cause, during which time everything is considered as suspended. This indulgence was refused to Mr. LAWLESS. Lord KENYON, in addition to the common form of the Court's assent to the application 'take a rule to show cause,' added 'and let Mr. LAWLESS be suspended from practising until the rule is disposed of.' He happened to be present in Court when this unexampled judgment was pronounced, and heard the sentence which led to his ruin. He rose in a state of most bitter agitation: 'My lord, I entreat you to recall that judgment; the charge is wholly unfounded; suspension will lead to my ruin; I have eighty causes in my office.' What was Lord KENYON's reply to this supplicatory appeal to him? 'So much the worse for your clients who have employed such a man! You shall remain suspended until the Court decides on the rule.' The rule came on to be heard on a subsequent day after the affidavits on the part of Mr. LAWLESS had been filed. The charges against him were found to be wholly without foundation, and the rule was accordingly discharged.

"Mr. LAWLESS was restored to his profession, but not to his character or peace of mind. He sank under the unmerited disgrace, and died of a broken heart."

This, no doubt, is what COCKBURN anticipated and intended for Dr. KENEALY, when he sent LUSH to Gray's Inn with an urgent message to the Benchers to destroy him! By a strange and almost providential coincidence, as the Doctor saw HUDDLESTON entering COLERIDGE'S private room at Gloucester on the very day the Oxford Circuit plot was arranged to expel him, so he met LUSH leaving Gray's Inn, after he had his wicked interview with the official there. The Doctor saluted LUSH, but the latter pretended not to see him. And so gratified was COCKBURN that the Benchers had carried out his vengeance, that he demonstrated it in this manner. For the sixteen or seventeen years that COCKBURN had been on the Bench, the Benchers had persistently invited him to their dinner on Grand Day, when they regale so many of the Judges at the expense of the Inn. COCKBURN *always refused;* he would not notice such persons. But immediately after they disbenched and disbarred Dr. KENEALY, COCKBURN, to their great satisfaction, dined with them on the Grand Day; and the drunken cheers and orgies, which were kept up till a late hour, re-echoed all through the solitary squares and courts, depriving all sober people of their sleep. So COCKBURN always refused to meet the Corporation of London at any of their "feeds," until he sought to curry favour in all quarters, after the TICHBORNE Trial.

LORD CHIEF JUSTICE ELLENBOROUGH.

"When I first entered Westminster Hall in my wig and gown," says Lord CAMPBELL, "I there found ELLENBOROUGH monarch of all he surveyed; and at this distance of time I can hardly recollect without awe his appearance and his manner, *as he ruled over his submissive subjects.*"

More severe censure than this upon both Bench and Bar, though CAMPBELL did not intend it to be so, can hardly be conceived.

LAW was a younger son of the Bishop of CARLISLE. His profligacy was notorious; it was said that he even for a time followed the example of the then Lord High Chancellor of England (THURLOW), the great prop of the Church, and chief distributor of ecclesiastical preferment, who openly kept one Mrs. HARVEY for his mistress, whom the wags of the Rolliad have celebrated. This, however, was in days when it was not a Queen, but a young and sturdy man was upon the Throne. His retainer for HASTINGS in the great Impeachment case opened out his pathway to professional success, and was the means of his reaching the post of Chief Justice. Lord ELLENBOROUGH, says his biographer, had a violent hatred of libellers, and generally animadverted upon them with much severity. Indeed, all these judicial tyrants hate the Press—unless when it becomes their interest to toady it. He *did his best* to convict LEIGH HUNT, the editor of the 'Examiner,' for publishing an article against the excess to which the punishment of flogging had been carried in the army. Nevertheless, to his unspeakable mortification, the Jury found a verdict of *Not Guilty.* In a discussion which arose in the Lords on those informations for libel, the violence of his language called forth loud animadversion from several noble lords. Lord STANHOPE declared that he was afraid of entering into any controversy with "the vituperative Chief Justice," justifying himself by the example of a peer celebrated for his politeness, of whom he told the anecdote. Lord CHESTERFIELD, when walking in the street, being pushed off the flags by an impudent fellow, who said to him, "I never give the wall to a scoundrel," the great master of courtesy immediately took off his hat, and making a low bow, replied, "Sir, I always do."

His spirit broke out at an early stage of this grand trial. He accused BURKE of having at their lordships' bar used calumnious and slanderous expressions. The words were taken down, and LAW said, "I acknowledge them, and abide by them." The Lord Chancellor rebuked him, and said it was contrary to order in the Counsel to advert to anything that had happened in the House of Commons; that it was *indecent* to apply the terms calumny and slander to anything which had been said by their authority, and that such expressions must not be repeated. Here, however, THURLOW stopped. He did not for the twenty following days vituperate the Counsel in the worst language of Billingsgate, nor do we read that the Toady Tufthunts of the day expelled him from their Bar Mess; and the Benchers of Lincoln's Inn assuredly did not attack him. So LAW proceeded on his course. When the Lords disallowed the evidence of the history of the Mahratta war, LAW having merely said "It would be an insult to their lordships and treachery to his client, were he to waste one minute in stating the objections to it," BURKE expressed deep regret that so many foreigners were present; "but" (looking into a box in which sate the Turkish ambassador and his suite, he added) "let us hope that some of them do not understand the English language, *as the insolent remarks we are compelled to hear from Counsel would be a disgrace to a Turkish court of justice.*" Still nobody attacked LAW for all this. It is clear there were no Tufthunts at the Bar in those days, and yet it is only some eighty years ago.

The Trial ended on the hundred and forty-fifth day, having lasted over several years. HASTINGS was acquitted, and the fortune of LAW was made. He was next to ERSKINE, with but a small distance between them.

In his fifty-third year he was appointed Lord Chief Justice. His temper was bad, his nature arrogant; he had a grasping desire to gain reputation by hurry in the dispatch of business. His vanity was excessive; his insolence hardly endurable; and he never failed to inflict the heaviest punishment that the law enabled him to bestow upon delinquents. These are qualifications, in our judgment, for a Judge of Hell—not for a Judge among the English People.

Having defended the Bill in the Lords, by which the Attorney-General was empowered to hold to bail in Cases Prosecuted by him, and Earl STANHOPE having said that such language might have been expected from JEFFREYES or SCROGGS, Lord ELLENBOROUGH with peculiar sensitiveness applied the comparison to himself, and thus retorted:—"My lords, from my station as Chief Justice of England I am entitled to some degree of respect; but I have been grossly calumniated by a Member of this House who has compared me to monsters who in former reigns disgraced the seat of Justice, such as SCROGGS and JEFFREYES. I shall treat the calumny and calumniator with contempt."

This was hardly decent language for a Judge. Lord STANHOPE'S reply was as follows:—"I meant no such comparison; and if the noble and learned lord, *from intimate acquaintance*, has found a resemblance, that must be one of his singularities; but his rash precipitancy in applying what fell from me, convinces me that it might be dangerous to delegate the power created by the Bill even to the noble and learned lord." We who live now, know that there was a great deal both of SCROGGS and JEFFREYES in ELLENBOROUGH.

Sir JAMES MACKINTOSH, who was present at the debate, writes: "Lord HOLLAND spoke with the calm dignity of a magistrate, and Lord ELLENBOROUGH with the coarse violence of a demagogue." In the proceedings against the Princess of WALES, in which ELLENBOROUGH was engaged, it was asserted that the Secret Enquiry before the Commissioners had been carried on unfairly; that improper questions had been put, and that the evidence had not been correctly taken down. These charges

were thought to refer to the Chief Justice, who rose up in his place, and in a violent rage denounced his accusers. Complaining of having been made the subject of the most unprincipled and abandoned slanders, he continued :—"It has been said, that after the testimony had been taken in a case where the most important interests were involved, the persons entrusted had thought fit to fabricate an unauthorised document purporting to relate what was not given, and to suppress what was given in evidence. My lords, *I assert that the accusation is as false as hell itself in every part* . . I will not touch on the decorum that ought to be observed in the proceedings of this House, further than in such a case is necessary, *but I will give the lie to such infamous falsehood* . . . This malignant and unfounded charge, this base and nefarious calumny, is one of the worst symptoms of the times in which we live. It shows an indifference in the public mind as to truth and falsehood; it originates in malice and is supported by ignorance; it is tossing firebrands in all directions, leaving those who are in danger from the flames to escape as well as they can, sometimes almost by a miracle." This speech, which, from its allusions to "hell," would greatly shock some of our modern purists on the bench, did little to convince the public mind. Nobody doubted, and no one now doubts, that to curry favour with the Prince REGENT, ELLENBOROUGH was equal to any *conformity* that would fix guilt or its appearance upon the wretched woman whom the uncle forced on the son. We are no admirers of Queen CAROLINE. She was a wretched character; but the minions round the palace hesitated at nothing that could, by blackening her, please the REGENT; and of these minions, this virulent Chief Justice was one of the most compliant. His son got an earldom as a reward for his father's guilt.

Sir SAMUEL ROMILLY was at this time in the full heyday of that splendid career whose main object was to rid our statute-book of those Draconic laws which were saturated with blood; hangings by the dozen for the pettiest offences being then a common sight at Newgate. Yet this wicked Judge opposed all this great Reformer's Bills for amending and making mild the criminal law, and denounced them openly as Jacobinical and Revolutionary. This is the pet cry of all such individuals who uphold vested crime. He had sold himself, body and soul, to Lord SIDMOUTH in these ever memorable words: "I am yours, and let the storm blow from what quarter of the hemisphere it may you shall always find me at your side." There was no infamy, therefore, of this weak and wretched, but wicked, Minister which his pliant tool, ELLENBOROUGH did not defend. He was quite as bad, and as basely subservient, as Sir ELIJAH IMPEY was to WARREN HASTINGS, and like him, would not have hesitated a moment to hang an innocent man if any purpose were to be served by it. Yet this is the man whom England, to its shame, tolerated as a Chief Justice for nearly fifteen years.

Sir SAMUEL ROMILLY in his diary mentions the following horrible fact :—

"Lord LAUDERDALE told me that soon after my pamphlet appeared in 1810, he had some conversation about it with ELLENBOROUGH, who told him that though the instances were very rare, yet it sometimes became necessary to execute the law against privately stealing in shops, and that he had himself left a man for execution at Worcester for that offence. The man had, he said, when he came to the bar, lolled out his tongue and acted the part of an idiot; that he saw the prisoner was counterfeiting idiocy, and bade him be on his guard; that the man, however, still went on in the same way, whereupon Lord ELLENBOROUGH, having put it to the jury to say whether the prisoner was really of weak mind, and they having found that he was not, and having convicted him, *left him for execution.* Upon which Lord LAUDERDALE asked the Chief Justice *what law there was which punished with death the counterfeiting idiocy in a Court of Justice?* and told him that he thought his was a stronger illustration of my doctrines than any of the instances which I had mentioned."

When the great Lord COCHRANE (afterwards Earl of DUNDONALD) was put upon his trial, this ELLENBOROUGH determined beforehand to convict him. COCHRANE was a political opponent, and was to be destroyed. Lord CAMPBELL tells us that ELLENBOROUGH used his best endeavours to convict this perfectly innocent man. He refused to adjourn the trial at the close of the prosecutor's case, about nine in the evening, when the trial had lasted twelve hours, and the Jury, as well as the defendant's counsel, were all completely exhausted, and all prayed for an adjournment. The following day, in summing up, prompted, no doubt, by the conclusion of his own mind, he laid special emphasis on every circumstance which might raise a suspicion against Lord COCHRANE, and elaborately explained away whatever at first sight appeared favourable to that gallant officer. In consequence, the Jury found a verdict of Guilty. This wretched Judge sentenced COCHRANE, one of the heroes of England, to fine and imprisonment, and to stand in the pillory! Years afterwards, when COCHRANE was ruined, and his whole life, as it were, made a curse to him, the proceedings were reversed, and he was restored as a perfectly innocent man to his rank and honours: but what was to atone to him for the past? For this crime ELLENBOROUGH ought to have been degraded from his office and whipped at the cart's tail through the streets of London.

The last great case in which this infamous Judge made himself still more infamous was that of HONE. This poor man was charged with publishing 'JOHN WILKES's Catechism,' 'The Political Litany,' and the 'Sinecurist's Creed.' So determined were the SIDMOUTH party to destroy him that they made each of these little tracts the subject of a separate information. Justice ABBOTT tried him the first day; the Jury to their honour acquitted him. This, says Lord CAMPBELL, being related to the Chief Justice, he swore that at whatever cost, he would preside in Court next day himself, so that conviction might be certain. Accordingly he appeared in Court, pale and hollow visaged, and more stern than when his strength was unimpaired. As he took his place on the bench, "*I am glad to see you, my* Lord ELLENBOROUGH," shouted HONE, "I know what you are come here for. I know what you want." "I am come to do justice," was the answer. "*My only wish is to see justice done.*" Is it not rather, my lord," retorted HONE, "to send a poor bookseller to rot in a dungeon?"

HONE defended himself well, and the Judge in his Summing-Up closed with the following words :—"I will deliver to you my solemn opinion, as *I am required by Act of Parliament so to do:* under the authority of that Act, and still more in obedience to my conscience and my GOD, I pronounce it to be a most IMPIOUS and PROFANE LIBEL. Hoping and believing that you are Christians, I doubt not that your opinion is the same."

Never was there a more horrid or blasphemous profanation of the sacred name of GOD, to gratify political and private hate, than this.

The Jury, who were neither *Fools nor Fanatics*, but twelve honest, resolute Englishmen, incapable of being cajoled or coerced, pronounced a verdict of

NOT GUILTY.

This was followed by a tremendous burst of applause, which this modern SCROGGS vainly sought to quell.

ELLENBOROUGH declared that he would proceed next day with the indictment on 'The Sinecurist's Creed.' He did so, and another glorious and independent Jury acquitted the bookseller, and disregarded the Judge.

This result killed him! He went, we may believe, where all such villains go.

WILLIAM HONE'S JURY.

As a pendant to the foregoing sketch of this Infamous Judge, we subjoin the names of those MAGNANIMOUS ENGLISHMEN who sat as Jurors on the three successive days of persecution; and animated by a truly noble spirit, preferred the voice of conscience to the blandishments of an erminèd scoundrel.

FIRST JURY.

JOHN GODWIN BOWRING, Leadenhall-street.
WILLIAM SYME, Fenchurch-buildings.
JOHN WOOLLETT, Gould-square.
JOHN O'BRIEN, Broad-street-buildings.
WILLIAM NOAKES, Little Eastcheap.
JOHN GARDINER, Old Broad-street.
NICHOLAS HILTON, Ironmonger-lane.
SAMUEL BROOKE, Old Jewry.
JAMES HUNTER, Barge-yard.
WILLIAM THOMPSON, Queen-street.
THOMAS LEWIS, Queen-street.
THOMAS EDWARDS, Coleman-street.

At the close of the case, it being signified that Mr. BOWRING had been directed by his fellows to deliver the verdict, Mr. LAW asked him whether they found the Defendant, WILLIAM HONE, Guilty or not Guilty.

Mr. BOWRING replied in a firm voice, NOT GUILTY.

The loudest acclamations were instantly heard in all parts of the Court. *Long live the honest Jury, and an honest Jury for ever!* were exclaimed by many voices. The waving of hats, handkerchiefs, and applause continued for several minutes. When order had been somewhat restored, Mr. Justice ABBOTT interposed, and desired that those who felt inclined to rejoice at the decision, would reserve the expressions of their satisfaction for a fitter place and opportunity. The people accordingly left the Court, and as they proceeded along the streets, the language of joy was most loudly and unequivocally expressed; every one with whom they met, and to whom they communicated the event, coming forward to swell the peal.

The trial of the Information against Mr. HONE for a Parody on the Litany, was ordered by the Court to come on the next morning at half-past nine o'clock.

SECOND JURY.

RICHARD WILSON, Great Eastcheap.
JOHN LINDSAY, Lawrence Pountney-lane.
RICHARD THOMPSON, Old Swan-passage.
WILLIAM GILLMAN, 54, Bread-street.
JOHN MACKIE, 12, Watling-street.
NEIL BLACK, 11, Bread-street.
JAMES JONES (No address.)
JAMES SMITH ,,
JOSHUA THORNE ,,
JAMES DONALDSON ,,
WILLIAM HALE ,,
WILLIAM GREEN ,,

We shall refer on another occasion to the ferocious language

and demeanour of the Judge during the Trial—conduct for which he ought to have been impeached and disbenched. But SIDMOUTH was all powerful in Parliament, and, of course, ELLENBOROUGH escaped.

The Jury at a quarter past six retired, at eight they returned, and their names having been called over, the Foreman, in a steady voice, pronounced a verdict of NOT GUILTY.

The Court was exceedingly crowded; and as soon as the decision was heard, loud and reiterated shouts of applause ensued. His Lordship called upon the Sheriffs to preserve order; but the expression of feeling was so universal that all interposition was impossible. The crowd then left the Court, and mixing with the multitude in the hall and in the passages, communicated their feelings with their news, and the loudest acclamations of applause filled the avenues, and were echoed through Guildhall and King-street, which were extremely crowded. Never, indeed, was a greater degree of public interest excited upon any trial.

THIRD JURY.

GEORGE MOREWOOD, Pancras-lane.
GEORGE ELWALL, Love-lane.
ROBERT EDGAR, Fenchurch-street.
DANIEL ECKENSTEIN, College-hill.
JAMES BARRY, Cateaton-street.
JAMES BROCKBANK, Bucklersbury.
WILLIAM CLUK, Philpot-lane.
RICHARD LEWIS (No address.)
ALFRED COLES ,,
JAMES PEARCE ,,
FREDERICK SANSUM ,,
ANTONY KING NEWMAN ,,

The Jury retired at half-past eight to consider their verdict. In twenty minutes the Jury returned into Court, and the Foreman, after the usual forms had been observed, pronounced Mr. HONE NOT GUILTY. The moment the verdict was announced, a spontaneous burst of applause issued from the crowd in the Court. This soon extended to the crowd outside, and for some minutes the hall and adjoining avenues rang with the loudest acclamations.

How proud of their fathers must the descendants of those noble Jurymen feel. While a particle of English spirit remains in England, the names of these men will be in honour. And if there be any of them into whose hands these pages shall come let them accept from us this tribute of respectful and affectionate esteem for them, as representatives of men who in those odious and corrupt days manfully stood up in defence of a persecuted man; and gallantly breasted all the abominable influences which the State generally brings to bear upon those whom it prosecutes; promises founded in corruption; threats based upon coercion; private blandishments and bribery; seductive whisperings and perjured Judges.

LORD NORTHBROOK.

A Hampshire man writes to us, and asks, "Why are you against Lord NORTHBROOK? He is a firm believer in TICHBORNE."

Our answer is this. If he believes in TICHBORNE why does he acquiesce in his unjust and cruel imprisonment? Why does he not come forward like a true Englishman and gentleman, and state to the world what he knows—namely, that at his own table, many months before the Trial, Sir ALEXANDER COCKBURN spoke in the presence of persons whose names we know, as follows: "THE FELLOW IS AN IMPOSTOR; AND IF I AM TO TRY HIM, I SHALL SEE THAT HE IS CONVICTED." We have already stated this; and Lord NORTHBROOK cannot deny it. But we care not for him.

BAD MEN ON THE BENCH.

"To put an irreverent and immoral man upon the Bench, simply because he is a clever lawyer, is one of the greatest crimes that a Government can commit; and yet such Judges have been in England before now; and alas! there are some still on the Bench whose moral characters are notoriously vile and loathsome. Shame on the country which sanctions Judges that neither fear GOD nor regard man!"—From the 'Homilist' for September, 1877, page 197.

OUR JUDGES!

Varlets
In scarlets,
With harlots;
Vermin
In ermine:—
Pigs or Prigs,
In wigs.

OUR LAWYERS.

Bullies in horsehairs;
Robbers and Corsairs:
That plunder the weak,
While they abjectly sneak
To the big and strong,
And confound Right with Wrong.

THE TICHBORNE JURY.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—There is an old saying that "Fortune favours the brave." If so, then I predict that, in spite of all that has been and is being brought to bear against Dr. KENEALY by those who would fain hurl him into oblivion, he will live to reign supreme over all his adversaries.

Setting aside whether the Claimant be TICHBORNE or not (although I believe him to be none other), there are thousands, yea, tens of thousands, in England alone who admire the true heroic spirit of Dr. KENEALY, for the brave manner in which he conducted himself during the late Trial. Never shall I forget reading his Opening Speech which he delivered before the infallible Judges, Jury, &c. A man who can stand before such, and fight single-handed for the liberty and justice of his countryman, to break the shackles of tyranny and despotism, as evinced in the recent Trial of the Claimant, the name of such a man, I say, deserves to and will be handed down to posterity for the admiration of future generations.

Thanks for the list of names, &c., of the TICHBORNE Jury. It has rather opened my eyes with surprise. Considering how the leading newspapers ('Times,' &c.) during the Trial commented on the superior intelligence of the Jury in such praiseworthy terms, I was led to think they were gentlemen of high social standing, and possessing rare abilities. Out of the twelve (I do not mean apostles) I select two public-house keepers, one shoemaker, one milkman, one hairdresser, one lodging-house keeper, and one butcher. Grand specimens of intelligence, I'll warrant. I was once asked if ever I knew an intelligent butcher? After puzzling my brains for a minute or two, I confessed I could not bring to mind a single instance. It is to be hoped the Juryman of that trade was an exception to the rule.—I am, yours faithfully,

BORDERER.

ACROSTIC.

E ach true heart honours thee throughout the land,
D aring to combat for the right 'gainst might;
W ith manly eloquence and courage grand,
A ttacking malice, persecution, spite.
R ich is thy wreath of honour and of fame,
D efying foes—on *them* rests all the shame.

V ainly they sought to quench thy noble zeal,
A nd crush thee with the weight of tyrant power;
U ndaunted still thou didst for truth appeal,
G iving no heed whatever clouds might lour.
H owever strong may envious hatred prove,
A ll base detraction thou art far above;
N one can displace thee in the PEOPLE'S love.

K ing-like thou stood'st amid the petty throng,
E ver at hand to fawn and flatter power;
N ever to aid the weak, but help the strong,
E ffeminate slaves, the creatures of an hour.
A bove them all thy clarion-voice was heard.
L ong as for freedom English hearts are stirred,
Y es, thou shalt live in fame—a household word.

CONTEMPTUOUS TREATMENT OF JUDGES.

When Mr. JOHN SCOTT (afterwards Lord ELDON) was at the Bar, he was remarked for the *sang froid* with which he treated the Judges. On one occasion a Junior Counsel, on hearing their lordships give judgment against his client, exclaimed that "he was surprised at such a decision." This was construed into a Contempt of Court, and he was ordered to attend at the Bar next morning. Fearful of the consequences, he consulted his friend, JOHN SCOTT, who told him to be perfectly at ease, for he would apologise for him in a way that would avert any unpleasant result. Accordingly, when the name of the delinquent was called, JOHN SCOTT rose, and coolly addressed the assembled tribunal: "I am very sorry, my lords, that my young friend has so far forgotten himself as to treat your Honourable Bench with disrespect; but he is extremely penitent, and you will kindly ascribe his unintentional insult to his ignorance. You must see at once that it did originate in that. He said he was surprised at the decision of your lordships! Now, if he had not been very ignorant of what takes place in this Court every day—had he known you but half as long as I have done, *he would not be surprised at anything you did.*"

THE COURAGE OF A WELSH JURY.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—As there are thousands of persons in the principality of Wales who are ardent admirers of the courage you maintained throughout the late TICHBORNE Trial, and who entertain very different opinions from that expressed by the Jury in this notorious Case as to what the verdict should have been, and also as many English scribblers, called editors, are very prone in their prints to ridicule Welsh Juries, of whose merits they may know utterly nothing, perhaps you will oblige me by publishing in your celebrated and widely circulated paper, the 'ENGLISHMAN,' the following extract, which I have faithfully translated from

the 'Gwladgarur' for January, 1836, Vol. IV., p. 10—a very reliable and renowned monthly periodical of the time.

The editor introduces the narrative which he is about to give thus:—"One of the excellences of the administration of justice in the Isle of Britain is the Trial by Jury; and frequently do our fellow-countrymen furnish us with noted examples of conscientious rectitude in discharging their duty as Jurymen, and in pronouncing their verdict, not only without respect of persons or the least partiality, but sometimes even at the risk of their own interest and personal safety. It is seldom, however, that we hear of an example of the kind which surpasses the following one. It occurred at a trial which took place before one of our Chief Justices, but the locality and the names of the parties to the suit, we must beg to be pardoned for not giving. Probably many of our readers will easily recognise the trial to which we allude. The nature of the indictment to be inquired into was as follows:—A gentleman and landed proprietor had brought a charge of assault and battery against a poor man, who was his tenant, and who had administered to him a personal castigation in protecting the virtue of his daughter and only child—a chaste and decent maiden of reproachless character. On the day immediately preceding the trial the father of the prosecutor entertained at an invited dinner-party the judges, barristers, and attorneys; and it is said that, to this day, some of the guests have not ceased to praise the excellence of the viands and wines of which they partook at this remarkable dinner.

"The following day, when the case was called, the poor prisoner was placed in the dock, and the prosecutor appeared against him, giving his evidence in a bold, assuring manner, and pledging his oath to every iota of the charge. But he was closely cross-examined by the Jury, who were honest and respectable agriculturists and tradesmen; for the poor prisoner had neither a barrister to plead his cause, nor an attorney to advise him. He was therefore obliged to defend himself; and, although he had no eloquence which enchanted the ear, yet he had truth which penetrated the understanding. The result was that the Jury gave their verdict in his favour, pronouncing him NOT GUILTY. The moment this verdict was uttered the Court became indignant, while the audience expressed approval by a loud burst of applause. Whereupon the Judge told the Jury that they must return to their room and reconsider the matter, adding that he was astonished at the disgraceful verdict they had pronounced. They bowed to the authority of the Bench, and back they went to their room. But in a quarter of an hour they returned again into Court, and then the venerable old man who was foreman of the Jury addressed the Bench in the following strain:—

"'My lord, in obedience to your command, we returned to our room, but as we could find no reason for changing our opinion nor our verdict, we now return to deliver again the same verdict to your lordship in the same words as before, NOT GUILTY! We have heard the reproachful language of your censure, but we cannot acknowledge such language as either warrantable or proper. It is true, my lord, that, regarded as individuals, and in reference to our worldly circumstances, we are but poor and insignificant persons; and, therefore, in this respect we claim no privilege above our low, but irreproachable station in life. Yet, my lord, as we are here convened in the character of Jury, we cannot do less than consider the importance of that department of the administration of justice in our kingdom, for which purpose we are here assembled. We think that, like yourself, we have been appointed by the laws of our country, not only as a responsible tribunal to judge between the king and his subjects, between the offender and the offended, but also that we occupy a position of still greater trust; for, as a Jury we form a kind of barricade for the defence of the populace against the ever-existing tendency to favour the rich, against prejudice, against evil temper, and against the partiality of the judgment seat.

"'With regard to you, my lord, were I to meet with you outside these walls, I should measure my respect for you by the degrees of your personal virtues. But here, in this court, your personal character is veiled by your official character; and it is in the latter character alone that we can view you here.

"'We would, by no means, under the present circumstances, presume to show the slightest degree of disrespect, or give the slightest offence to the bench; it is our wish to treat it with the esteem which is due to one judgment seat from another; so as to honour the one as well as the other. Nor does this body of Jurymen, my lord, wish to accuse the bench of either partiality, prejudice, rashness, corruption, or oppression. On the contrary, we regard it as a royal mercy-seat—as a sanctuary of truth and rectitude. Nevertheless, my lord, we cannot erase from our memory the principles of our school books, nor the impressions made on our consciences in our youth. We are bound to remember that Sovereigns and Judges are but fallible men, and that the "royal mercy-seat and the sanctuary of truth," have been defiled by such men as TRESLIAN, SCROGGS, and JEFFREYES.

(Here the judicial bench showed signs of displeasure; but the brave old man proceeded.)

"'True, my lord, I am but a poor man, still I am one of the free-born subjects of this kingdom,—I am a member of the commonwealth; nay, I am at present even higher, for I am one of its representatives, and, therefore, on this ground, I claim for myself and fellow-Jurymen the liberty of speech, and if I am denied this liberty where I am now, I shall claim it, before the people outside, in front of this building, and I shall not fail to tell them the reason why I express my opinions outside instead of inside this Court. (By this time the bench gave indications that it had cooled down a little, and the speaker went on.)

"'As I have already said, my lord, we have nothing to do with your personal character here, we regard you in this place solely in the character of *Judge*, and, as such, we honour you. On the other hand, you have nothing to do with our character except as Jurymen; and, as we occupy that position, we claim also equal honour. For we know no man, however high his rank and titles, to whom the laws of the commonwealth should have given authority to cast unmerited reproach on that tribunal, to the keeping of which have been entrusted the most valuable privileges enjoyed by the people of this country. And, as I said before, my lord, inasmuch as we are assembled here, not as separate individuals, and not as arrogating to ourselves any supremity, but in the capacity of a Jury, it would be an indignity to the State itself, if we did not claim, that every man who loves that State should be duly respected. We have, according to the dictates of our own consciences, discharged our duties as honest men. If we have been mistaken in the verdict we have returned, we are responsible, not to your lordship, nor even to the KING, who has placed you on that Bench, but to an authority infinitely higher, namely, the King of kings.'

"At the conclusion of this address the Bench was dumb, and the Bar silent; astonishment and approval pervaded the whole Court. The result was the release of the poor prisoner."

Thus terminates the remarkable narrative and speech which I have just translated for your approval. You are to understand that this instance of the courage of a Jury, under trying circumstances, is no romance or fable, but an actual occurrence. But unfortunately *all* Juries are not so brave and honest.—I am, Sir,

Yours truly,

JEUAN GRYG.

June 19, 1874.

COLERIDGEANA.

As a considerable amount of slander and vituperation has been levelled against Dr. KENEALY, for some portions of his Speech, we append the following, as examples of what Sir JOHN COLERIDGE spake at the first Trial:—

Extract from TICHBORNE'S cross-examination by Sir JOHN COLERIDGE, in the Common Pleas. Page 802.

TICHBORNE: Well, I think the Solicitor-General's conduct is very insolent, my lord.

Sir J. COLERIDGE: I mean it to be!

Extracts from the Solicitor-General's Speech, January 15th, 1872: from the 'Daily Telegraph.'

My duty is to show—at all events to try to show—that the estates and all the hopes of the great Family of TICHBORNE centre in the little child who is my Client; and that the noble lady his Mother—his Mother and guardian—has indeed a full right to the ancient title which she honours by bearing, and that she is not to be cast down and see her child bereft of his inheritance by the cunning and audacious schemes of a CONSPIRATOR, a PERJURER, a FORGER, an IMPOSTOR, and a VILLAIN. (Applause from the Defendant's side.) Gentlemen, the words I just used are strong words I admit, and they shall be followed, if I can find them in the English language, by stronger still: and yet I am satisfied that long before I have done the observations which it is my duty to lay before you, you will agree with me that they are weak compared with those which the undoubted and proved facts of this Case would well warrant me in employing: because it is not—I presume to say so now—it is not a matter of argument or of opinion, but of fact and demonstration. I shall be able to lay before you hundreds of facts, each indisputable, each conclusive, each inconsistent with the story told by the Plaintiff; each convicting him of a Fraud, of a Lie, of a Crime on a scale of depth which, so far as I know the annals of the law-courts, has been hitherto unsounded.

But I desire, if I can, and if my strength of body and mind be enough, once for all to unmask and disclose this Detestable Imposture; and I desire to do it so thoroughly that it shall require no second doing. . . . .

There is a huge and monstrous Imposture, to the accidental and temporary and apparent success of which, if success it is to be called, a great many persons have in various ways and in various degrees contributed. . . . .

Now, I have told you, I ask you to believe in the existence of a huge Imposture, and I ask you first of all to remember what were the circumstances of the Family, what was the position of things at Tichborne and in Hampshire, and who were the different actors and persons differently interested in the initiation of this Imposture, which enabled it to take the shape it did, and to assume the form which it did assume. . . . .

The Dowager Lady TICHBORNE was therefore peculiarly ready for the acceptance of any scheme that might be put forward by any clever and audacious Schemer. . . . .

Mr. BAIGENT seems to be a very clever but an utterly unscrupulous man, a man who knew a great deal about the Family—a man who, from peculiar circumstances, was hostile to it, and who was extremely glad to use the information, which he undoubtedly possessed, in a sense hostile to the TICHBORNES. . . . .

There was also CARTER, who was brought into communication with the Plaintiff. I hope I don't use too strong a term when I call him a Rascal. . . . .

As to the things the Claimant has stated, some are false, others are fabricated. . . . . Of his relations with the DOUGHTYS, and of his leaving this country, he either told an infamous falsehood or was in total ignorance. . . . . I think you will feel with me that I am correct in saying that the Melipilla point of the Case is one of the strongest and the most overwhelming proofs of the Fraud and Imposture of which the Plaintiff has been guilty.

ROGER CHARLES TICHBORNE, upon whose honour nobody pretends to be able to breathe a single stain, tried for horse stealing —*a common Australian thief*—in the course of eight or nine years! . . . . . I say it is altogether incredible that the man who

A SOUTH AMERICAN MONK.

wrote the letters, some of which you have heard, could have become the low Ruffian, and the associate of low ruffians, which the Plaintiff's cross-examination shows him to have been.

You will find that while with gentlemen the French accent is dropped it is resumed with persons in a lower social position, which, I submit, is an indication of the grossest Fraud. . . .

I now come to his relation with his Cousin, and to the conduct of the Plaintiff in regard to that Sealed Packet, and to those persons—*I hardly like to call them men*—who joined in making that charge—a swaggering banker* coming from Winchester to initial this foul charge against a spotless lady, and then to talk about the purity of motives.

*Mr. Bulpitt.

January 16th.

But what I have to do now is to show you how they fit in, and to let you see that, upon the face of those documents, the Claimant told a wicked, deliberate, and groundless Lie. . . . .

I hope in God you are able to follow me now, and you see that by these dates he is convicted of the most Infernal Lie that ever Villain told in a Court of Justice. . . . . It was shown out of his own mouth to be *a foul lie* within five minutes or within ten minutes after that lie was uttered, and I venture to say it is a fabrication from beginning to end. As far as my experience goes in Courts of Justice, I have never known anything so *infernally wicked and so absolutely groundless* as is shown by the documents in the Case itself. I do not like to use words that are not my own, but I cannot refrain from quoting a line which I have seen

below a portrait of the Plaintiff, and which I think is peculiarly appropriate: "*These lies are like the father that begot them, gross as a mountain, open, palpable.*" (Here the Attorney-General halted while two or three of the Jury consulted together. Gentlemen, I beg pardon if I have said more than I ought on this matter.

There are in them injunctions to secrecy, and allusions to keep things concealed, for which it would be difficult to give an innocent account; and altogether I should submit to you that even as far as I have gone—and I have yet a great deal more to go into—this series of correspondence shows that *the persons who were parties*, and especially the Plaintiff himself, who was the chief party, *were conscious that they were putting forward a thoroughly unjust claim*, and backing it up by means which he knew to be fraudulent and dishonest. . . . .

January 17th.

Now, if this were an honest Case; if there were a fragment of honesty or fairness about it, would not that letter have been produced? . . . .

January 18th.

Having to do with an uncommonly astute man, not, indeed, of great ability, but of a shrewd cunning, of a low order, as great as ever was seen in a Court of Justice. . . . .

I have heard of a man going about with a lantern in the middle of the day, to see if he could find an honest man; but if in a search for that not very abundant article he looked into the Claimant's face, I doubt very much if he would find it there.

January 19th.

If it is BOGLE—as I believe it is—it is another proof of his addiction to falsehood: if it be the Plaintiff, it is not of much moment; but it is only additional evidence, among the hundreds of other such cases, of the total want of truth in him.

Further, whenever there was *any low blackguard matter* brought home to the Claimant—any misrepresentation, falsehood, misstatement, or aspersion upon some one's character, what would rise to his lips? "Just like ROGER," associating him always with low people, lying, and dishonour. It is utterly untrue; it is an aspersion cast upon the character and honour of as fine a young man as ever lived; but what did it signify to BAIGENT to asperse the character of the dead, chivalrous and high-minded as the real ROGER was, if he could serve by so doing the cause of the living Claimant. I say—although it is possible that even in that I am making a long stretch—that he may at one time, and for some period, have believed in the Claimant; but it is impossible he can believe in him now, because *though his moral sense is perverted*, his cross-examination showed that it is stifled in him rather than extinguished. He shrank from no insinuation, and stuck at no form of words which might suggest an unfavourable conclusion, which he did not dare to utter; but when my learned friend put him upon his oath, when he was driven by Mr. HAWKINS, time after time, into the very presence of his GOD, he shrank from taking the last step in false assertions. He would not state upon his oath the falsehood he did not hesitate to insinuate to you. In my poor judgment, *a thousand times better is the reckless Liar and the open Ruffian than this kind of cruel, crafty fellow, who will stab your reputation in the dark if he can get the chance*, but who, if you meet him face to face in the light of day, take him by the throat and tear the knife out of his hand, tells you he meant you no harm, and that you quite misunderstood the purpose with which he was carrying the weapon. I should be sorry to deny that BAIGENT may have been something more than a conscious conspirator; but I say he soon became so. He kept his eyes shut against proofs which should have opened them. Gentlemen, he may be deceived, but if he is, he is self-deceived. He is the victim, and the willing victim, of his own self-deceit; and there is no form of this odious vice more hateful to a simple-minded, honourable man, than that which veils spite and untruthfulness under the guise of frankness, and behind the profession of religion. That is what I have to say of Mr. BAIGENT. . . . .

January 22nd.

I forget the Latin, but the English is something like this:—

> "Soon grows the pigmy to gigantic size,
> Her feet on Earth, her forehead in the skies;
> . . . . . .
> This done relates, not done she feigns,
> And mingles truth with lies."

This is real good sense, and that is the way in which this and all other impostures have sprung up. . . . Does it not show to demonstration *that the persons who then knew most of the Claimant had come to the conclusion that this was a gross imposture*—that it was an imposture to be backed up for persons who had an interest in backing it up for the sake of money. . . . .

January 25th.

On the 16th of January, 1868, Miss BRAINE is first introduced to him—a person who plays a prominent part in the principal scenes of this discreditable drama. . . . .

These instances may be proofs of the weakness of her judgment, but they are certainly proofs of the extremely subtle ingenuity of her mind, and of what extreme use she would be to a person like the Plaintiff, who wanted a subtle and ingenious mind to back him up by suggestions! . . . . Miss BRAINE is a person of great subtlety and ingenuity of mind. She is so subtle that she cannot understand the simplest questions or the plainest words, and it takes a page of cross-examination to get from her the simplest answer.

Under this man's roof she spent nine long weary months soon after she made his acquaintance in January, 1868. What that house was, what its inmates were, its habits, its associates, we know already, or we shall know. This illiterate man and his illiterate wife quarrelling with their servants and with one another—money-lenders, publicans, comic-song singers, drunken soldiers, servants—these, and the like of these, did Miss BRAINE, the lady of education and position, consort with, and, I suppose, delight in for nine long weary months. Why? Why should Miss BRAINE cling to his person like a leech, write letters for him, correct his French and his spelling, touch up his grammar, and *become the depository of his plots and his secrets*, and lend the whole energy of a subtle and ingenious mind to further his Case?

February 2nd.

It is not a mere piece of forgetfulness, but is a falsehood. It cannot be true; it is an absolute, unmitigated, undisguised falsehood. . . . . I never in all my life heard of so many falsehoods told in the same number of hours and I daresay I never shall again. . . . .

February 7th.

Of course, my mind may be entirely obscured and clouded by this strange fog and mystery and obscurity in which the whole TICHBORNE Case is enveloped, or else I should have thought that demonstration from the writing of the real ROGER TICHBORNE himself that he was never near the place from which the man who claims his name professes to take the name of CASTRO, and to found the whole claim upon. I should have thought that was some slight evidence that he was a rank and gross and arrant impostor. And I say of *those lawyers, whoever they may be*, who, after the demonstration of the iniquity and injustice and groundlessness and fraud of a claim, after all of it is demonstrated to their minds, if after that they lend themselves for one moment to the Prosecution of it, they make themselves accomplices of the guilt of the person whom they so represent. I maintain that in the strongest manner. I have always maintained it; and, if after the demonstration I believe I have given already, if after the demonstration I shall be enabled to give, this Case is maintained as a just cause, unless that demonstration is met by argument, unless the facts I have put forward are demolished, I shall not hesitate, feeling the responsibility, and knowing that unworthily I am for a moment head of a great and honourable profession, I shall not hesitate to express my opinion at the course persons take under circumstances of that description.

His hair, according to my notion, has got darker since the beginning of the Trial—a good deal. It curled and was a fairish brown, when we first had the pleasure of seeing him. Perhaps it is grief that has made it straight. The tendency to curl has certainly diminished, and the hue of it has certainly got considerably darker; I should say so, at least, but whether it has or not I leave to you. . . I will not argue, because it is not very material as to whether *in the mass of falsehoods told in this Case there are one or two more or less.* With some men it makes a difference their being convicted of one or two, but it is done here *by the bushel*, and, therefore, does not much matter whether you throw in one or take one out. . . . .

"The endeavour on the part of Sir ROGER'S opponents to confound him with ARTHUR ORTON is simply a bit of chicanery, for they do not fight honourably in any of their proceedings." Now, Gentlemen, you have heard from my learned friend attacks of that sort; you have heard now Mr. HOLMES say this—you have heard my learned friend three times over accuse *them*—not saying whom, but *them* in the plural, meaning anybody—of *a deliberate conspiracy.* What proof, what vestige of evidence has ever Mr. HOLMES or my learned friend produced to support those charges? What fragment of proof is there of that statement; absolutely none—as far as we know—absolutely none; as far as Mr. HOLMES or my learned friend has attempted to prove the statement that here he makes, and that my learned friend repeated in his opening address to you, and repeated two or three times over in the course of the Case, that there *was a deliberate conspiracy* on their part, not saying on whose part. Whom does he mean by "they" and "them"? Does he mean the young Sir HENRY, does he mean Lady TICHBORNE, does he mean Lady DOUGHTY, does he mean Colonel GREENWOOD, does he mean Mr. HENRY or Mr. ALFRED SEYMOUR, does he mean Mr. RADCLIFFE or Mrs. RADCLIFFE, does he mean Mrs. NANGLE? Whom does he mean? Does he mean Messrs. DOBINSON and GEARE, does he mean me—whom does he mean? He says "they"—*they* are guilty of deliberate conspiracy, and *they*, says Mr. HOLMES, do not fight honourably. What have we done? Who has done, from beginning to end in this Case, one single act which an honourable attorney, or an honourable gentleman wearing the gown of Counsel, or a lady or gentleman need be in the least degree ashamed of? Where is the proof to justify this attack? I want to know? Talk about complaining of strong language being used! What right have persons to make attacks of this sort—gross, unfounded attacks—and not an attempt to prove them? Here it is Mr. HOLMES who makes the attack, and I say my learned friend *has* over and over again.

"He has, however, at his back, a large number of good and influential friends who sympathise with him *in the wicked opposition* he has met with, and who will not allow him to go to the wall." The wicked opposition! "The wicked opposition he has met with," and "who will not allow him to go to the wall."

Now, I pass "wicked opposition," because I have said what I wished to say on that. Men should be careful, even if their words are not worth more than Mr. HOLMES'S. They should be careful how they make charges of this kind, without attempting to prove them, and without any foundation whatever for the charges they make.

I have dealt with the question of bribery. So far from being bribed, there is no pretence for saying that anybody was bribed; but so far from this person being interested, he gave the greatest trouble, and was a hostile partisan—hostile to us, but most friendly to the Plaintiff. . . . .

I think you will be of opinion, my lord, that a more unfair thing to do than transmit these one-sided affidavits, got up in the way they had been, *manufactured as they had been*, to turn them into Spanish, and send them over to Witnesses going to be examined under the Chilian Commission, was as unfair and as unrighteous a thing, and as calculated to prevent truth and justice, as anything that Mr. HOLMES and Mr. BAIGENT could conceive. However, that is what they did.

In a Case which, as my learned friend has most truly said, and I adopt his words as accurately as I can recollect them, if it is not a true Case, is one of the most atrocious conspiracies of modern times—those are my learned friend's words, not mine—if there is any explanation to give in a Case which may be an atrocious conspiracy, Mr. HOLMES can give it. Why is not Mr. HOLMES called to give it; Mr. HOLMES is not called to give it, and we do not know whether Mr. HOLMES asks for an explanation, or, if he asked for it, what explanation he got, if he got any. . . . .

Is the whole of the evidence I am about to read to you presently absolute fabrication? If not, what is his answer to it? If not, what explanation was given of that evidence to Mr. HOLMES? I have said things which appear to me to be just and true, and right of me to say of Mr. HOLMES. Mr. HOLMES, at all events in my judgment, as the evidence shows, both before he threw the Case up and after he threw the Case up, was, I need say no more than this, *not over scrupulous*.

It is for you to say what you think about who this person is; but at all events, he has in common with ARTHUR ORTON—that ARTHUR ORTON seems to have had a very slight acquaintance with telling the truth, or, at all events, he did not practise it much. I suppose he thought, and apparently he agreed in that with the Claimant, as I have heard of a man, who was a *great liar*, that *he had such a respect for the truth, that he told it only on very particular occasions indeed*, and it very possibly may be the case; at all events, there is that resemblance between the Claimant and ARTHUR ORTON; and there is this also, that ARTHUR ORTON seems to have been given, at this time, at all events, to a great deal of swaggering. We shall see, when we pursue this person to Australia and elsewhere, whether there was not this kind of swaggering language. . . . .

Gentlemen, there is the letter—I will not say letter—but the collateral and other falsehood about the time he was there. . . . . Now, what earthly interest has Captain OATES in the matter? Who is Captain OATES? A respectable man, a merchant captain, sailing in good large ships, a perfectly respectable and trustworthy man. What interest has he? Is he in the conspiracy? Is he one of the persons whom my friend calls "they" and "them"? Has he been purchased by the nefarious BOWKER? If he be, as I suggest, an *arrant impostor*, he knew and can know nothing of what took place on board the 'Bella.'

My learned friend, amongst other of these insinuations—I do not call them direct and open charges on people—at page 25, opens JULES BERRAUT in this way: "He had at that time a servant, a person named JULES BERRAUT. I am afraid his habits were not those which will commend him to you as being those of a very prudent or sober man. He undoubtedly, if the story is true, got on board this vessel *exceedingly drunk*; as, undoubtedly, if his story be true, JULES BERRAUT *took advantage of that drunkenness to avail himself of such property as he could obtain possession of*; but, undoubtedly, somehow or other, he sailed in the 'Bella.'"

February 12th.

The result of it is that both the Claimant's supposed times are negatived by evidence that amounts to demonstration, and with regard to both of them the Claimant is in each case respectively *convicted of falsehood*.

Mr. LOCOCK WEBB, with that innocent simplicity which distinguishes Equity gentlemen, thinks that a proof of truth, but I should think that *sticking to an examination that way*, and relating the same thing over and over again in the same words, was not the most conclusive proof. Now the history of the name 'Osprey' and the whole of this part of this Case is exceedingly curious. It is, I think you will agree with me, *fraudulent in the highest degree*, and I will show you how the *fraud* originated, how it was traced out, how *one fraud was supplanted by another fraud*, how that *second fraud* was found to be untenable until supplanted by a *third fraud*, which *third fraud* I will show also to be absolutely untrue and without foundation. It is a little interlude which is interesting, because it shows the recklessness of the man. He takes up a story and swears through thick and thin this is the case. He is utterly, hopelessly contradicted, and then says it is something else. . . . .

The ingenuity with which these things are done, and the *low craft*—a man who was about it could have done it better if he knew how; but there is a certain small cunning in it.

But look at *the craft and wickedness of the man*. He first pins himself to a schooner, and then, when it turns out that that ship will not do, he turns round, and when he thinks the evidence is made safe he lays hold of the 'Themis,' and when he is beaten out of the 'Themis' he turns round, saying it is the American 'Osprey,' and then, when he comes into the box, he says, "I am under the impression it is the 'Osprey,'" and then he finds that the Clyde Carmichael 'Osprey' will not do, and then he says, "I will give you the narrow and easily-searched area of America, north and south, to discover the 'Osprey.'"

I am tracing a man, *not one single syllable of whose statements from beginning to end are worth the breath he spent in making them*, and what he means to do I do not know, but what I tell you is, I am tracing him step by step.

February 13th.

It did not come to much, I think, if examined carefully; but still there was an awkward impression that there might *be more truth in this fellow's story;* and to use Mr. BAIGENT'S expression, they ran too close together to be comfortable.

Gentlemen, was there ever such a case? Was there ever such a case in which *Fraud, and Imposture, and Untruthfulness* are stamped on every feature, as it is in this in which I am now speaking about—this case of the 'Bella' and the 'Osprey?' Recollect the ludicrous story he tells about the wreck—the utterly inconceivable facts which he asks you, as men of sense, to believe in relation to the wreck and the rescue. Then recollect *the frauds he practises* with regard to these three ships—the way he brings forward respectable people, *pledging themselves to falsehood*. I do not mean falsehood as far as they are concerned; but to pledge themselves to support a story which turns out utterly and absolutely untrue—*a story which he must have known was untrue*—a story which he cannot possibly have been deceived about—a story which, if he has put it forward, *he has deliberately put it forward to defraud you*—to destroy the reputation of persons to whom he is opposed—to take away the rightful inheritance of a young child, and bring discredit, dishonour, and infamy on persons with whom he says he is intimately allied. All this done deliberately, without the possibility of mistake about it. If you find the case on the part of the Plaintiff to be from beginning to end, with regard to the 'Bella' and the 'Osprey,' *a tissue of absurdities, a tissue of falsehoods, and a tissue of fraud*, what do you say to the whole Case? I shall be able to satisfy you upon the Australian evidence with as much demonstration, and, clear as it is, that the whole Case put forward on the part of the Plaintiff is *fraudulent and is an imposture*. . . . I shall have made out to you that in Australia, as in Chili, the story told by the Plaintiff is false—*is false of his knowledge*. The Plaintiff unsupported is not worth the breath that he uses in making the statements. They may be true, though he says them; but certainly not true because he says them in any way.

I give you the key to his whole Australian case, and I show you that his whole Australian case is *founded on fraud and falsehood*, and the very foundation of it—the very engagement with Mr. FORSTER, and being called CASTRO in 1854 is a *fabrication*. Gentlemen, the simple solution of this story (I do not want to be very recondite or lengthened in the solution) I can only suggest to you is, this is a falsehood put into his mind by the affidavits which he had seen, communicated by him to the attorneys and agents for the Plaintiff, concealed by him carefully from us, and flashed upon us in cross-examination, as I say, from materials supplied by himself, and we, having this bitterly hostile blackguard, who has come to us and totally deceived us, and disguised his whole evidence from us, put on our hands in this way, so that we should not be able to cross-examine him. . . . . Having laid a *deliberate plot* to take in the persons on whose side he was professing to give evidence, and giving evidence, as I say, on the face of it untrue, and which, it is plain, came out of the instructions of CASTRO, or some persons employed by CASTRO, *to tell all these stories, not one single word of which you can believe for a moment*. Probably they have been kind enough to forward him to you for the purpose of being called on your side, in order that they may have the advantage, on cross-examination, of all the materials he has been putting into their minds, or possibly which they have been putting into his.

February 14th.

I have said too often, I am afraid, already, that where he stands absolutely unconfirmed, his evidence is not worth the breath he uses in giving utterance to it. . . . . What I have to deal with in this part of the Case is, as to his stay at Wagga-Wagga, until we come to the *initiation of the conspiracy*, with which I have troubled you at length in an earlier part of my address to you.

February 15th.

I satisfied you, I trust, that the Plaintiff was never in partner-

ship with BURROWS; and I told you that I thought I could suggest a reason why he told that apparently *gratuitous falsehood*, because it did not answer his Case and he simply might have left it alone.

"He came to me one evening and said he was lately married, and brought his wife with him." Well, that I suppose was a marriage of a colonial, or at all events, not a very binding marriage, because it must have been the marriage which he and the gentle ANNIE dissolved by mutual consent afterwards. It was not his present wife. . . . .

The LORD CHIEF JUSTICE: The affidavit you have just referred to of CATER'S, 28th May, 1868, is the affidavit which the Plaintiff's advisers expressly did not use, on the ground that it could not be relied on, as I understood, is it not?

The ATTORNEY-GENERAL: It is just the reverse, my lord. Mr. HOLMES found out that it could not be relied on, but after that was known, after the Australian Commission was used, my learned friends were put into the position to use that affidavit by the affidavit of Mr. SPOFFORTH, and Mr. SPOFFORTH wrote to CATER offering him £500, after knowing the history of the affidavit of CATER.

The LORD CHIEF JUSTICE: Is that the affidavit?

The ATTORNEY-GENERAL: That is the affidavit. To do Mr. HOLMES justice, he said, "I cannot use it—it turns out to be useless." Mr. SPOFFORTH, by his affidavit, put my learned friends in a position to use it if they pleased, they being no doubt ignorant of this; then Mr. SPOFFORTH, *who must have known this*, writes and offers CATER £500 for himself and ARTHUR ORTON £500 if he could bring him.

The LORD CHIEF JUSTICE: I only asked whether it is the same affidavit.

The ATTORNEY-GENERAL: It is the same affidavit; so that if ARTHUR ORTON should come, we can appraise him in all senses for ourselves.

You see he tells different stories to different people, but they are almost all of them such stories as what we know of the real history of this man. It is conceivable that he might have told little scraps of truth in them, here and there *mixed up with a good deal of lying*.

I am unable to suggest any adequate solution of *the falsehoods told by this person* with regard to Mr. SHIELL, and the correspondence in the evidence of Mr. SHIELL. I do not know, as I have said more than once, *except to keep his hand in*, why he told these *falsehoods. That they were falsehoods, and appear* to have been utter and unmitigated, you will see.

Mr. ROBERTSON is on the spot, and he knows—we know from Mr. SPOFFORTH, at all events—down to a very late point of last year what were the funds in the possession of Messrs. BAXTER, ROSE, and NORTON. *A thousand pounds is offered* in a single letter, at the stroke of a pen, to one Witness, and to Mr. CATER we know how much, at all events, was offered.

"It *looks like an attempt to bolster up a fraud*." Gentlemen, that is what it is exactly. That is what this man has been doing from the beginning to the end of this Case. He has been where he could, to get dupes or tools; he has been *manufacturing evidence for the purpose of supporting a fraudulent claim*; but in the Case of Mr. SHIELL, he met with a gentleman of memory, and education, and position, and his attempt to bolster up his claim by such a wretched piece of evidence met with instant and complete repudiation.

Gentlemen, I say, except for the purpose of *making evidence to support a fraudulent claim*, I cannot conceive why he should have done this. There is no pretence for it, not a shadow of foundation; and except, as I say, for the purpose of *manufacturing evidence*, it is excessively difficult to see why he should have made this attack upon Mr. SHIELL.

Nothing would have been easier than to have asked those questions. If such a suggestion was intended to be relied on by-and-bye, nothing would have been fairer than to have asked those questions. It would have given us an intimation of what the Case was intended to be, it would have given us data which we could have examined—which, going by other data in this Case, we could have confuted. The utter *falsity and hollowness* of any pretence put forward by the Plaintiff in respect of them could have been in all probability demonstrated. No such argument was put forward. No such suggestion is made. No such questions are asked. . . .

That was, however, before the Case had assumed its present shape, before, on all kinds of grounds, the Plaintiff had been *convicted of utter falsehood and fraud*, and, therefore, before the absolute worthlessness of anything the Plaintiff might say had been so demonstrated, as I take leave to say, I think now it has been. . . .

You know, three times over, at least, the learned Serjeant who is so sensitive when strong observations are made on himself, has thought fit to charge the ORTON Case *as a deliberate conspiracy*. He has said it was concocted—he has used the word "concocted," and he has said it was a *deliberate conspiracy* three times over. I read you the passages, and I do not want to read them again. I must be excused if I feel that unless some proof is suggested of that, it is a little hard that people should have that sort of accusation hurled at their head with great vehemence of language and gesticulation, when no proof is brought forward.

February 19th.

Ask ourselves whether of *low cunning*—I do not say great astuteness or ability, but *low cunning*—you ever saw such an example? . . . .

If these people were honest, straightforward people who had nothing but the truth to tell, why on earth tell us all these *untruths?* They had no reason for concealing their connection with the brother, and if it was a connection they had no reason to be ashamed of, and were not afraid of its coming out as being mixed up with the Plaintiff in this Case, why on earth tell all these *purposeless falsehoods* to us? They are *falsehoods, utter falsehoods*, if the story they tell is true—purposeless falsehoods. Why should they tell them, and what is your belief about the rest of the statements of persons who will tell such *utter falsehoods* as those? . . . .

If CHARLES ORTON is his brother, or is not, he must have told *a falsehood deliberately* one way or the other; because he cannot be mistaken about whether a man is or is not his brother, and as he has stated it both ways, he must have told you *a lie* on one side. . . . .

You know the worth of the Plaintiff's oath. I should be ashamed, at this period of the Case, to discuss it with you, but the *fraud of the Plaintiff in making this statement, and the wickedness of the Plaintiff*, is very conspicuous. Now Mr. BULPITT is a *disagreeable subject*, and at the end of a very long and weary discourse to you, I do not propose to make it any longer by dwelling at length *upon his character*. It is not necessary that I should do so, and not being necessary, I refrain. You yourselves have seen him in the box; you recollect his pretence of intimacy with the TICHBORNE family; it appears, except in the time of Sir JAMES, he never associated with them at all. You recollect his description of the six Misses TICHBORNE, the handsomest set of young women he had ever seen in the county, as if they were a set of young heifers or fillies put up for sale, which no doubt he thought was the perfection of ease and gentlemanlike manner. You saw *the insolent way* he refused to answer my questions until he was compelled to answer them by the Judge. You saw the *endless and hopeless contradictions of his sworn evidence*, and you remember at last—what I should have thought would have been an absolutely humiliating confession for a man to make—that *he did not abide by his sworn oath and would not abide by it*. Gentlemen, you remember his account of how he went into Mr. HOLMES'S office, anxious, if possible, to see this, and dying with curiosity to see that, and doing all sorts of things, thrusting himself into all sorts of places becoming and unbecoming, as he said, without any motive. Gentlemen, a sort of busybody—a kind of fussy curiosity, but, as he said, with no motive, and, I suppose, *no particular principle*. He said he had got GOSFORD to dine with him, not expecting to find the people he did find, and he put the law in force against GOSFORD, with a good deal of hardness—with no motive, as he said; but, I cannot help thinking, with no particular principle. I cannot help saying Mr. BULPITT seems to be *a poor kind of creature;* he hardly rises to the dignity of even a bad motive, and although perhaps he might be one of those persons who would move

"The wise man
"To that scorn which wisdom holds unlawful ever,"

I would rather leave it to you to value his evidence, and for the gentlemen of Hampshire to say, now they have heard his conduct, how they like his company, and I pass on from Mr. BULPITT. But Mr. BULPITT is necessary, because you will see *he takes a part in this black and villainous transaction*. . . . . BULPITT'S character, I dare say, was better known to GOSFORD than it is to me, and when BULPITT said he should like to see him at dinner at the Grosvenor, GOSFORD, who owed him £500 to £700, had nothing to do but to say he should be very happy to go. . . . However, GOSFORD was in *Bulpitt's toils*. BULPITT had repeatedly pressed him, and he admitted to me he told old BAIGENT, if he did not get some satisfaction from GOSFORD, the law must take its course, and accordingly at dinner they met. . . . . You have, therefore, the Claimant, whose oath I will not waste words in weighing, unconfirmed by the only other Witness to the transaction, who has been called; you have his account pointedly challenged by his cross-examination, to which I am about in a moment to direct your attention, and the learned Serjeant leaves this important portion of the Case without the evidence of either Mr. WHYTE or Mr. HINGSTON, whom the Claimant vouches as having been present (*though I believe that it is untrue*) during the whole of the interview.

He has elected to tell his story through the mouth of the Plaintiff, and of Mr. BULPITT, *the worth of whose evidence I confidently leave to you*. . . . . Here is a man whose oath is not worth the breath he spends in making it, saying one thing, and GOSFORD saying another. . . . . Am I wrong in expressing strong opinions and strong language as to the way in which this Case is conducted? Here is a villainous slander, if it be a slander at all, allowed to stand in this way. . . . . It is supported by nobody but the Plaintiff, about whose oath at four o'clock in the afternoon, I will not trouble you with a single observation.

February 20th.

He knew that Mr. GOSFORD was a needy man; he knew, or thought he knew, it was a question of his oath against Mr. GOSFORD'S oath, and that at the worst all that a Jury could do would be, as he thought, to say, there is one man says one thing, there is another says another; the document is gone, and nobody

can say for certain which of the two people tells the truth. Whether it was at night, or when exactly it was that this *Infernal Council I am about to call your attention to was held*, I know not, but in the recesses of *a mind capacious of the blackest villainy*, about this time the Plaintiff appears to have conceived the idea of making this charge against Mrs. RADCLIFFE. Her happiness, the comfort of her whole life, the honour of her husband, the lives of her children, her connections, her family, all were as nothing to this Villain, if he could blast her reputation and destroy her evidence. He thought the document was destroyed, and they appear to have held a council. I do not know, and I do not wish to know, who were present at it; they appear to have held a council as to what, under these circumstances, should be done. Mr. BULPITT has told us that he at least was present, and that from him he will not swear did not come *the hateful suggestion* that this charge should be put into writing, and that the document should be produced. Was there nobody better than a Winchester banker to be brought up from Winchester, for no motive, as he tells us, and with no particular interest in the Case, to make this hateful suggestion? . . . .

So that he waits until he has got proof, as he thinks, that he cannot be contradicted in writing, and then the Banker and the Attorney, and God knows who besides, for I do not want to know, meet there, and this charge is concocted.

What do you think, Gentlemen, of a man in the position of Mr. BULPITT, who would come up, and first of all make a suggestion that the hateful thing should be put in writing, and then should himself, for the purpose of giving it weight and authority, initial this precious document? Gentlemen, Mr. BULPITT comes before us, and the learned Serjeant, once or twice over, said that it was due to his position, and due to this, and due to that, that he should have an opportunity of explaining. Gentlemen, Mr. BULPITT, I am told, is a magistrate of Hampshire; Mr. BULPITT is a man who, I suppose, counts as a gentleman in that county. I wonder what the HEATHCOTES, the LEFEVRES, the SCLATER-BOOTHS, the CHOLMONDELEYS, the PORTALS, and the PAULETTS, think of this gentleman? I wonder what the MILDMAYS and other gentlemen and families of eminence in Hampshire, think of Mr. BULPITT? *Is this the kind of thing they associate with?* Is this the person whom the gentry of Hampshire invite to their tables? Is there a gentleman who hears me who does not repudiate with indignation *the notion of sitting down at a table with a man who is capable of such intolerable conduct as that?* which, to my mind, is absolutely conclusive that the story is *a wicked and abominable fabrication*. I would rather not know from whom came the precious suggestion that now this document was out of the way, the contents should be stated. I would rather not know whom it came from; but from whomever it came, it came from a mind incapable of any gentlemanlike emotion, and incapable of judging of the actions and character of a gentleman. . . . .

Now, *that I call shabby to the very dregs of shabbiness*, and I say that is like the rest of the Claimant's conduct in this Case. There is a pretence and affectation about it which, forgive me for saying what I once said before, makes me—I do not know whether it makes you—*makes me sick*. I can quite understand either course being taken, one by a gentleman, and one by a man who is not a gentleman, but a straightforward snob; but a snob who affects to be a gentleman is about the most disgusting spectacle to my eye that this world can possess.

I do not know what you think, but to my mind it is one of the saddest permanent results of this Case that it should be possible for men to be found in the world, and men found in great numbers in the world, who can really think that this man, whom we have seen in the box, has the manners of a gentleman. First of all, it sends one back to one's first principles, to think where one's own notions of gentlemanlike manners have flown from, if that is a gentleman; but the painful thing to reflect is—and it is a most painful thing; I shall never get over the pain of it—if it be true, and these people are right, why, what a poor convention it is, and how easily that which distinguishes us, as we fondly think, from persons who have not had equal advantages, how mightily easily it can be learnt. If this man with his letters, and manners, and ideas, can really pass muster as an English gentleman, after passing with Mr. HOLMES and Mr. BULPITT three years, why, goodness me! what are the manners of an English gentleman worth? I venture to think that it is one of those things which, as I say, in this Case have been affected by what I have called the glamour. I cannot think that anybody would say, who is brought into Court to hear that man, *that he had been within a hundred miles of a gentleman;* but it seems it is what people do think, and it certainly is one of the curious features of this Case.

Now, with reference to Miss HALES, you know it turns out that he was never paying her attention at all, and he wrote a letter to her apologising for mentioning her name in Court. So that this Don Quixote of a gentlemen is so magnificent in his generosity, and so exalted in the character of his breeding, that English noblemen pale their ineffectual fires before him. This gentleman tells you that the only thing from which he knows the time he seduced his Cousin was that he was paying attention to another young lady at Canterbury at the same time, to whom he never did pay his attentions, who never heard of him, and to whom he wrote to apologise for mentioning her name. This is a magnificent instance of what I say is the Snob affecting to be a gentleman. . . .

It is impossible to measure the scorn in any honourable mind towards such a Ruffian.

Mrs. RADCLIFFE knew perfectly well that from the moment this Villain belied her name, that men in plenty, and women too, would be found to repeat and to say—of course, with the deepest possible regret—that "human nature, my dear sir, being what it is, there must be some truth in the story." Gentlemen, Mrs. CANDOUR and JOSEPH SURFACE, and Sir BENJAMIN BACKBITE and Lady SNEERWELL, are as true to nature now as they were when SHERIDAN drew them. But she met this in the only true way in which a true, pure, and honourable woman could meet it, when it was my duty to draw *this hateful lie* into light, and to force the Slanderer into a definite statement. It was done at her own desire and by her own choice, in her presence, and she wished, and she insisted upon meeting her Slanderer face to face. She trembled, Gentlemen, as you might see, but she did not shrink. She opposed the shield of her innocence to his poisoned darts, and there she, now a wife and a mother, stood, her husband by her side, and met the gaze of a crowded Court, and defied the Vile Miscreant to do his worst in your presence.

That such a man as ROGER CHARLES TICHBORNE is disclosed to have been by these letters, would have ever stated, to save life and to get an estate ten times as big as Tichborne, or would ever have come into that box and made the statement he has made, after having made it in the Villainous and Detestable manner he made it to other people, so as to make it necessary that the matter should be brought out. . . . .

I cross-examined him in the dark without knowing anything of this letter. Did you ever see such an amount of low cunning as shown in this matter by the Plaintiff?

So you see, the Scoundrel puts it upon me, and wishes to make me responsible for the statement being made. One really cannot measure the scorn which every honourable man must feel for a Ruffian.

I take my learned friend's own statement, and his own showing, and say that his client is an Impostor and a Rascal.

February 21st.

Here, we say, was Mr. HOLMES, who for three years was the soul of the Conspiracy, and Mr. Serjeant BALLANTINE dare not call him into the box to say he was not. Did you ever know a case of conspiracy where they dared not put into the box a man who could say whether the charge was true or not? Here is a man who, if our story be untrue, can confute us, who, if their story be true, can confirm it, and they dare not put him before the Jury.

Then there is the attack on Mrs. RADCLIFFE—one of the foulest, and basest, and most disgraceful attacks that was ever made, I believe, for any purpose, by any man or any woman. These are the acts by which this delicate-minded Plaintiff tries to asperse honourable people who came to denounce him as an Impostor. According to the old lines, he

> "Invents worse names, and spreads worse calumnies,
> Or wit can speak or pregnant spite devise;
> Strike home, gash deep, nor lie nor slander spare,
> For wounds, though cured, may leave behind a scar."

That is the principle on which the Plaintiff has proceeded from the beginning to the end of this Case, and of all people whom he has most maligned is ROGER CHARLES TICHBORNE himself.

It has been shown to demonstration that so far as his oath is concerned it is absolutely worthless. He has been shown out of his own mouth to be capable, at any rate, of putting forward such as we see he has in fact put forward, if there was the smallest chance that such a fraud would succeed. This man has a slouch in his gait; this man for some reason, has an inturned knee; this man might be described as a man was once described:

> "Far away
> Among the honest shoulders of the crowd,
> You could read Rascal in the motions of his back,
> And Scoundrel in his subtly-sliding knee."

From your recollection of what you have seen of Mr. CASTRO, you might well think that he had sat as the original of that portrait.

The man whom I have described before in words I do not repent of using—in words I have made good—in words I now repeat, as a Conspirator, a Perjurer, a Slanderer, and a Villain.

NOTE.

The different fates which attended the Counsel for the Family, and the Counsel for the Claimant, realise the old proverb, "One man may steal a horse, while another may not look over a hedge." This, indeed, is but an echo of what JUVENAL wrote long ago:

"Committunt eadem diverso crimina fato,
Ille crucem pretium sceleris tulit, hic diadema;"

Of which a friend obliges us with a free translation:

"COLERIDGE is made a Peer and Judge,
A meet reward for *his* abuse;
The Benchers, for a like offence,
Are asked to cook KENEALY'S goose."

PRIVILEGE OF COUNSEL.

We have called attention (*ante*, pages 259 and 260) to the language of Mr. DISRAELI and Lord ERSKINE, with reference to the hitherto undoubted right of Counsel to comment freely upon the conduct of Plaintiffs or Defendants, Prosecutors or Witnesses. The former of these eminent men did not hesitate to put his thoughts into words which seem to us to be stronger than probably, on full consideration, he would now repeat. Nevertheless, it is in language indicating a very powerful impression of a *right* which existed in the speaker's mind. Without this right Trials in our Courts would be an absolute mockery; it is essential for the due administration of justice that there should be no restriction put upon the speech of Counsel, except that which his own sense of justice and honour imposes. If he is to speak under a feeling of servitude to the Judge, or of cowardly and base alarm for the consequences; if he is to weigh every word and sentence and metaphorical expression; if he is to have perpetually before his mind's eye a vision of my lord scowling and frowning upon him, carefully noting and penning down every phrase, and transforming all he says into the very worst aspect which it is capable of bearing, with the laudable object of getting him disbarred; if, moreover, the Judge does not correct him at the time, but bottles up his wrath until all opportunity for explanation or retractation is past—if this is to be the new state of things, we can only say the Bar is lost, ruined, and disgraced: and suitors will no longer have a chance of right being done, for no advocate will dare to do his duty. The whole profession will be reduced to abject slavery; new strength, new blood, must be infused into it, to save it from destruction and dishonour; and a powerful and united body like that of the Solicitors must be admitted to all the present rights of Barristers, for the purpose of forming a mighty alliance and phalanx bold and strong enough to resist judicial tyranny, which the Bar at present seems too weak or too contemptible to oppose.

In the well-known case of *Hodgson* v. *Scarlett*, which was an action brought against the Defendant (afterwards Lord ABINGER), it was clearly established that Counsel is privileged for the use of any language to which his sense of duty compels him to resort; and that he is only liable where actual *malice* is made out to the satisfaction of a Jury. Now this is the issue which the Chief Justice has sent before the Benchers. If Dr. KENEALY has abused his privilege, and spoken maliciously of any Witness, that Witness has a right of action against him at this moment. If either Lord BELLEW, or GOSFORD, feels aggrieved, why do they not bring their mighty wrongs before an independent jury, and seek damages for defamation? If they are not advised to do so, with what face can the Benchers be asked to find that Dr. KENEALY spoke maliciously when defending his client? If he did not speak with malice, why, then, looking at precedents, and comparing his words with those of Messrs. COLERIDGE and HAWKINS, he has used no language so bad as theirs, and ought not to be yelled down while they go scot free. It is unfair to judge of a forty-four-day speech in which hundreds of Witnesses were to be commented upon, by comparing it with a speech or with conduct in an ordinary trial. Follow Mr. HUDDLESTONE, or Mr. HAWKINS, or Mr. Serjeant BALLANTINE, through their causes for forty-four successive days, and their addresses in these causes; extract all their flowers of speech; garland them into one bouquet, and then compare the aggregate with that of Dr. KENEALY. This would be the only just mode of dealing with what he said; but as this would be impossible, it follows that it is impossible to be just to Dr. KENEALY. The truth is, the whole affair is so abominable, so devoid of even the first principles of common equity; so dread a blow aimed at the profession, and at the rights of all persons who may become involved in law, that we can hardly bring ourselves to believe that it is real at all, but that it is rather some hideous dream that can have no foundation. In our judgment never before was so fearful a stab given to the order of barristers; and if they were not a fallen and degraded body they would have risen as one man to resent it. But the profession has deteriorated from what it was. There is a low and mercenary competition among the Inns of Court, not to admit to the degree of barrister, scholars and gentlemen who are competent to adorn it, but to gather in riff-raff, scum, and "costermongers" from all quarters, and admit them indiscriminately, for the sake of having a large muster roll upon their books of persons whom they have called to that once honourable degree. Anyone who has watched the change that has taken place in the composition of the Bar for the last twenty years will admit this; and had they not been indeed a fallen race the Judges would not dare to treat them with the scorn that they do, nor would they endure from the Judges the unbridled insolence with which "their lordships" treat them from day to day. To snub, to sneer at, to insult, to lower in public estimation, to raise a laugh at Counsel's expense, is now one of the daily delights of Westminster Hall; and the profession consists of such low-bred, low-minded and ignorant practitioners that they take their kickings like well-bred flunkies. There is far more spirit among the Attorneys. Ever since the unfortunate Statute which gives to Judges the power of appointing "barristers of three years' standing" to the post of Revisors, the Bar has been gradually losing caste, and it has now sunk into a body of subservient worshippers of those who have those degrading pittances to bestow. There is a baronet on the Oxford Circuit who looks as regularly for his revisorship (some £200 a-year) as if it were a matter of life and death; and when such is the feeling among those of that degree, it cannot be wondered at that persons of a different and lower order abase themselves for money, or money's worth, falling down and kissing the ground with a suppleness that delights their worthy patrons.

This general rule is of course not without exceptions. In so large a body as the Bar there must inevitably be gentlemen of high honour, intelligence, and spirit admitted every term. That these are intermingled with the common body no one can deny; but that they are in a small and glorious minority is equally certain. Many of them secede wholly from the Courts after a brief interval, in which they find themselves outstripped in the race by the friends and pot-house companions of lawyers' clerks, and who, being devoid of all learning or gentleman-like feeling, wriggle themselves into general business, and are content to be kicked so long as they can dine. These are the men who have lowered the tone of the Bar to its present degradation.

The following are the words of the Judges in *Hodgson* v. *Scarlett*:

Lord ELLENBOROUGH: The law privileges many communications, which otherwise might be considered calumnious and become the subject of an action. In the case of master and servant, the convenience of mankind requires that what is said in fair communication between man and man, upon the subject of character, should be privileged, if made bona fide and without malice. If, however, the party giving the character knows what he says to be untrue, that may deprive him of the protection which the law throws around such communications. So, a Counsel entrusted with the interests of others, and speaking from their information for the sake of public convenience, is privileged in commenting fairly and bona fide on the circumstances of the case, and in making observations on the parties concerned, and their instruments or agents in bringing the cause into Court. Now, the plaintiff in this case was not merely the attorney, but was mixed up in the concoction of the antecedent facts out of which the original cause arose; he was cognizant of all the circumstances, and knew that the plaintiff had no ground of action in that case, in consequence of having already received more than the amount recoverable by him. It was in commenting on this conduct that the words were used by the defendant. He had a right so to comment, for the plaintiff was mixed up with the circumstances of the case, and was agent and instrument in the transaction. The defendant then says he is a fraudulent and wicked attorney. These were words not used at random or unnecessary, but were a comment upon the plaintiff's conduct as attorney. Perhaps they were too strong. It may have been too much to say that he was guilty of fraud, and between man and man, and of wickedness in *foro divino*. The expression, in the exercise of a candour fit to be adopted, might have been spared. But still a Counsel might bona fide think such an expression justifiable under the circumstances. It appears to me that the words spoken were uttered in the original cause, and were relevant and pertinent to it; and consequently that this action is not maintainable.

BAYLEY, J.: This rule seems to me to be correctly laid down in *Brook* v. *Sir Henry Montague*, "That a Counsellor hath a privilege to enforce anything which is informed unto him for his client, and to give it in evidence, it being pertinent to the matter in question, and not to examine whether it be true or false." No mischief will ensue from allowing the privilege to that extent.

ABBOTT, J.: I am of opinion that no action can be maintained

unless it can be shown that the Counsel availed himself of his situation maliciously to utter words wholly unjustifiable. It would be impossible that justice could be well administered, if Counsel were to be questioned for the too great strength of their expressions. Here the words were pertinent, and there is no pretence for saying that the defendant maliciously availed himself of his situation to utter them.

HOLROYD, J.: I am of the same opinion. In the case of *Flint* v. *Pike*, 4 B. & C., 473, the subject was thus incidentally noticed by two of the Judges, in pronouncing their judgment.

BAYLEY, J.: The speech of the Counsel is privileged by the occasion on which it is spoken. He is at liberty to make strong, even calumnious observations, against the party, the witnesses, and the Attorney in the cause. The law presumes that he acts in discharge of his duty, and in pursuance of his instructions, and allows him this privilege, because it is for the advantage of the administration of justice that he should have free liberty of speech.

HOLROYD, J.: With a view to the due administration of justice, Counsel are privileged in what they say. Unless the administration of justice is to be fettered, they must have full liberty of speech in making their observations, which, it must be remembered, may be answered by the opposing Counsel, and commented on by the Judge. Therefore, in the course of the administration of justice, Counsel have a special privilege of uttering matter even injurious to an individual on the ground that such a privilege tends to the better administration of justice. —'ENGLISHMAN,' May 2, 1874.

THE ENGLISH BAR.

Dr. KENEALY, in October, 1875, published the following, as his opinion of the English Bar, as demonstrated by their conduct generally, and in the TICHBORNE Trial. After pointing out the manner in which the Junior Bar has been bribed into base servility by the places and offices at the disposal of the Judges, and by the recommendations which they give, he continues thus:—

"I have shown you how the seniors are also led by the hope of reward into the most mean and cringing conduct in their professional career. I have also made manifest how impure the administration of justice must be, when its officers are taken from a body of barristers thus trained to a long life of sycophancy, sneaking and falsehood. Could the Judges on the Bench but hear the way in which their tyranny to the Bar is spoken of by both inner and outer circles, their seats would be seats of thorns. Curses, not loud, but deep, perpetually issue from the lips of those whom they trample. All their faults are put in the worst light; all their peccadilloes are commented on in the most satirical and biting language; while false smiles and hypocritical compliments greet 'their lordships' from every quarter; and they hear themselves hailed as gods, and treated as kings by men who loathe, detest, and despise them.

"This, of course, is human nature. The most trampled niggers will curse their masters, while they dare not openly lift a hand against them. In the Southern States, while that glorious time existed, when every planter could whop or whip his own nigger, SAMBO smiled upon his oppressor to his face, and cursed him from his very heart when he turned his back. In his presence he behaved with all the outward fawning of the most miserable Eastern serf; but when the master was away, then the whole passionate rage and hatred of an oppressed, trampled, outraged human worm burst forth in full vent; and the outward obeisance which he was forced to show was made amends for in secret among his brother-sufferers, by a wild fury which transformed the man into a demon. In like manner the 'slaves of the lamp' which shows us its uncertain and deceitful light under the name of 'law,' execrate and despise the disgusting thraldom under which their cupidity, their covetousness, or their necessities compel them to live. Their whole life is a lie and a slavery; and those of them who have any sensitiveness of feeling regard their existence as little better than a curse.

"Time was when this condition did not exist—when a barrister did his duty to his client and his country, and feared no man; when he came before the public and did not read in the frown of the Judge a threat of professional ruin. We know the spirit of the Bar in the days of CHARLES the First, and the Commonwealth; we know how great and brave-hearted men fought against the unconstitutional conduct of King JAMES the Second. In the last century the GEORGES always found themselves faced by courageous lawyers, when they attempted aught against public liberty and private right; even in the present, we know how BROUGHAM and DENMAN, and O'CONNELL, fought against royal or magisterial villainy—but now all is changed. Debasement is the order of the day in Westminster Hall; and we need none of us feel curious to behold an Asiatic or an African slave market, when we can witness it any moment for ourselves, by simply walking down to Whitehall and curiously examining any of her Majesty's Courts of Common-law. What it may be in the Equity Courts I cannot say, as I have had no personal experience of them; but from all I have heard I entertain no doubt that the same spectacle of niggerism may be seen; that the Bench there has its wretched tyrants, and the benches in front possess their manacled slaves.

"And this is the profession which now ventures to call itself 'Liberal,' and dared to exclude me from it, because I spoke my thoughts freely, and would not abase myself, and betray my client! because I was the one man who stood up for its independence, and sought to interpose myself between it and utter degradation. For this I have been made the victim; but what has not the Bar lost? Its own respect—if it ever possessed any—and the respect of all who are not Slaves, or Villains, or Cowards.

"During the early days of that accursed Prosecution, when it was for the first time seen of late years in Westminster Hall that a Barrister was not to be cowed, or cajoled, or trampled upon, I cannot describe to you what commendation I received, in private, from those who dared not think aloud. Men came to me in the long and winding passages about that Devil's Labyrinth, and shook me by the hand; and compared me to SOMERS, and ERSKINE, and CURRAN. They bade me go on and prosper, and promised me the countenance and goodwill of all my fellows, for thus exhibiting the independent spirit of an Honest Advocate. But as months rolled on, and it was seen that the Claimant *must* be convicted, and that the most maniacal rage was vented upon myself by all those who were resolved to convict, the faces of my brethren changed towards me; like the sons of JACOB, 'they hated me, and would not speak peaceably unto me.' Every day was to be seen the odious sight of a certain official whispering to them in corners, and conveying to them this person's impression, and that person's rage, and hinting that the time was at hand when I must be made an example of, for the benefit of all others. Hint after hint did I receive from some in whom one or two sparks of honour glowed, to eat my words; to 'leave ORTON to his fate;' to change my whole demeanour; and to be humble; to conciliate; to be respectful; to be this, that, and the other; and then ——

"But no—I *could not* do it. My whole nature must have undergone a change of the most fearful kind, before I could deviate from the path on which I had entered. Was I to sneak into darkness out of light? and from a free man to put on fetters? Was I to be false to him, and to those who confided in me, and become an unwilling tool of those who, from political necessity or private influences, had from the first resolved that TICHBORNE must be destroyed? No! a thousand times, No! No!—not for all the honours of the earth!

"Meanwhile, as I sat in Gray's Inn Hall, one or two there, who were as yet uncorrupted by the tremendous forces brought into play, gave me words of cheering, and were bitter beyond measure at the treatment which I was hourly receiving. I told them what had been hinted of 'expulsion' and 'ruin,' but they affected to laugh the threat to scorn. Yet the whole of these men soon afterwards joined in the mad torrent against me. One of them received a special invitation to be present at the last day of the Trial, so that he might personally know both of the Judicial slander and the Jurymen's abuse—so that he might afterwards rake them up against me at the Bench table when the clock had struck the hour for my destruction. The Jury, one and all, had behaved to me with civility up to forty-eight hours before their verdict, and then everything went wrong; and TICHBORNE, who had been hailed by one of them on the Thursday with the words 'Cheer up, Sir ROGER,' was condemned on the Saturday; and I also was made the subject of their vilification.

"How the Bar exulted at the condemnation of TICHBORNE, you all know. It was like the wild yell of a body of slaves who danced and howled in the presence of cruel masters whom they hoped to please and to pay court to. And when Gray's Inn published to the world—a thing never done before in the whole annals of the Bar—that they meant to arraign me, not a single barrister had courage enough to call his brethren together and protest against so cruel an act; nor did any write a line in public in my favour, though it was evident my ruin must be the prelude to their acknowledged slavery. Nay, when I applied to the most eminent among them, whom I had known long and intimately, and in whom I once thought the chivalry of a soldier would be found, to appear before the Benchers as my Counsel, he gave a vague excuse for declining to do so; and he was evidently afraid to face the whirlwind or breast the torrents that were let loose.

"In one word, all around was cowardice, baseness, meanness, and servility. Long as I had seen the fallen spirit of the Bar, I did not even guess that it had been so reduced; but when the Oxford Circuit ratified the decree which COLERIDGE, as it were, specially came among them to promulgate, I knew then the fate that was in store for me; nor did I care any longer to belong to such a body. And then my health utterly gave way, and the tremendous strain to which I had been subjected for so many long months, with no assistance until the end was near, overpowered me; and still my enemies never relaxed their persecution; and still the Bar behaved like cravens, and not one of them stood forward to help a sinking brother, and all seemed chained by the hope of gain, or profit, or promotion, and I was swept out

of my profession in the most ruthless and unpitying manner, and the men who had for years plotted for the utter slavery of the Bar saw with gladness that this dreadful object was accomplished and that all its members were in bondage.

"Every member of the Bar now knows that if he publishes a letter in a newspaper, or delivers a speech in public, in which the administration of justice is censured, he is liable to be ruined.

"Every Queen's Counsel knows that if he does either the one or the other of these things, a like fate may befall him; and that the Chancellor will take away his patent—which means his life. In the Army and Navy it has long been well understood, that if a man finds fault in public with his superior officer, or with the administration of affairs, he is liable to be turned out of the service. But then the Army and Navy are governed on the principles of despotism, and must necessarily be so; for without despotic authority, neither service could be adequately conducted. And men enter them with full knowledge that they are despotisms; and they are, besides, paid servants, and liable to dismissal for breach of duty. But never until my case was anything like this done at the Bar. Never until my case did it change into an open and avowed despotism in which free thought, free expression, and free action were all stifled, as if such things must not be taken to exist in the higher branch of the law. Never yet was it known that any man was so punished as I have been, and by an irresponsible tribunal, which manifests its contempt for public opinion so openly and daringly; and when I asked them for a public hearing, they scornfully refused; and when I besought them to listen to my defence, which every man put upon his trial, in even the worst despotisms, receives—namely, a fair hearing in answer to his accusers—they denied me with disdain. Yet so broken is the national spirit, that no one does anything effectual in Parliament against this horrid wrong; and I have not done so, because I regard it, not as a crime against an individual only, but as a crime against every man in the community.

"Why do I recall these things, which are already, perhaps, too familiar to you? It is for this purpose: that you may know by clear and positive facts that there is one great profession over which the Whig faction has established a hard despotism—a despotism founded, it is true, upon their own selfishness and degeneracy; but the selfishness and degeneracy are the work of our 'Statesmen,' or rather are called into the most wicked active operation by the measures which our Rulers have designedly passed for the gradual introduction of slavery among us.

"We have so-called Statesmen; but this is an act which violates every principle of a Free or Constitutional State. And none has censured it. We have professing lovers of Freedom; yet not one has raised his voice against this monstrous deed of the worst Tyranny. Why is all this? I will tell you.

"In the first place, the Whigs are in all things the supporters of Despotism, while in public they pretend to be the People's friends and advocates. The Tories, as we know, are too foolish to oppose the Whigs in this; and, instead of exposing them as mere pretenders, they accept them as being 'Liberal,' and simply say, 'You go too fast.' If they had any sense, or generalship, they ought to unmask the Whigs, and show, as they easily could, that all their measures have only one tendency, and that is gradually to subvert the Constitution, and take away all liberty from the People. The Whigs have succeeded in both; and the People do not know it; and the Tories have not wit enough to find it out, and take the place of the Whigs, and restore to the Millions the rights of which they have been robbed. If their leader had been a general, a strategist, or even a simple tactician, he would have accomplished this. But every one who has contemplated Mr. DISRAELI'S public life knows that it is only one continued blunder: and that, as Lord SALISBURY says, he succeeds in nothing but 'leading his party into a ditch.' If he fancies that he has led them into present power, he is mistaken. It was the conduct of the late Ministry that did it. That conduct disgusted the whole Country; and Mr. DISRAELI is in place, not because the Country loved him, but because it loathed his predecessors. Nor has that loathing abated in the least.

"But there is another reason why the 'Statesmen' or 'Orators' of neither Party have taken this guilty deed up. The Whigs committed themselves to the Prosecution of TICHBORNE, and perpetrated no end of crimes that he might be convicted. The Tories have (like fools) taken under their shield of protection all these crimes, and have plunged themselves as deeply in the dirt as the late Cabinet. *I* have exposed both, and am consequently obnoxious to both. No one, therefore, cares to help me, but all would snuff me out of existence if they could; because, so long as I am before the Public, I am as a standing reproach to the conduct of the two. And, in their hatred of me, they unite to be silent about the great Constitutional wrong of which I have been made the unhappy victim. And both sustain the infamous conviction of an innocent Man, and the equally infamous treatment of his Counsel; because each of the two Political Parties is equally criminal, and equally responsible before GOD and Man, for these two most wicked acts.—Believe me to be with truth, your faithful Friend,

"EDWARD VAUGHAN KENEALY."

CATALOGUE OF THE DOWAGER LADY TICHBORNE'S AUCTION.

IN CHANCERY.—MORRIS *v.* HUMFRAYS.

WINCHESTER.

About 800 Ounces of Silver Plate, Jewellery, and Trinkets, Plated Articles.

Large quantity of very superior bed and table linen, valuable Oil Paintings and Engravings, real Russian Sable and Ermine Muffs, Wearing Apparel, 700 Vols. of Books, French Mantel Timepiece, Ornamental Articles, and miscellaneous Effects, late the Property of the Dowager Lady HENRIETTE FELICITE TICHBORNE, deceased.

MR. GEORGE SMITH is favoured with instructions to SELL by AUCTION, at St. John's House, Winchester, on Wednesday, the 2nd of February, 1870, and following day, at half-past twelve o'clock, punctually,—The above-mentioned

VALUABLE EFFECTS,

comprising a handsome necklet, with ear-rings to match, set with emeralds; gold and other bracelets, finger-rings, lady's gold watch and chain; in silver, about 13 dozen forks and spoons, dessert knives and forks, soup tureen; two teapots, coffee pot, chocolate pot, pair of entrée dishes, salvers, bowl and cover, butter dish and cover; plated tea trays with silver edges; 43 damask table cloths, 16 dozen table napkins, 33 tray cloths, 77 pairs of linen sheets, six dozen pillow cases, 20 dozen chamber towels, about 50 dozen kitchen and pantry cloths, about 700 volumes of Books, amongst which will be found L'Histoire de la Vie de Jésus Christ, par De Ligny. 2 vols, 4to, mor. elegant. Histoire de St. Elizabeth, ditto, Histoire de Jerusalem, 2 vols., Histoire de la Sainte Vierge, 2 vols. Lives of the Saints, 14 vols. Tracts, Sermons for the Christian Seasons, 11 vols. Œuvres de Molière, 5 vols. Heman's Life and Works, 5 vols. Thornton's British India, 5 vols. Shakespeare, 2 vols., calf. Blackwood's Magazine, 11 vols., and various volumes of sermons and miscellaneous literature. A variety of ornamental articles, comprising a French mantel timepiece, mounted in malachite, china ornaments, writing desks, work boxes, about twenty oil paintings, and a variety of engravings; also, a real Russian Sable Muff of large size, Ermine Muff with victorine and cuffs, wearing apparel, and many miscellaneous effects.

ORDER OF SALE.

FIRST DAY.—Silver, jewellery, plated goods, furs, pictures, and miscellaneous.

SECOND DAY.—Books, linen, and wearing apparel.

May be viewed on the day preceding the sale, and catalogues (6d. each) may be obtained on and after January 24th of the Auctioneer, Winchester.—'Hampshire Chronicle,' January 15, 1870.

THE CLAIMANT'S JEWELLERY.

At Messrs. CLARK'S Sale-rooms, in Old Bond-street, the Claimant's jewellery was sold by auction, under an order from the Court of Bankruptcy. Lot 1, consisting of a gold keyless chronometer, by SANGSTER, Cockspur-street, with all recent improvements, the back engraved with the arms of the "TICHBORNE" family, fetched £32; a double-link Albert chain, 18 carat, hall-marked, with bar and centre pendant, and two patent snap rings, £19; a gold fusee case, 18 carat, hall-marked, by "JENNER and KNEWSTUB," crested, £7 10s.; a gold locket, with platina horse-shoe, containing portrait and hair, £3 10s.; a fine gold "Bramah" jewel case key, £2 12s.; a gold seal, set with bloodstone and onyx, crested, £2 10s.; a gold signet ring, with crest cut in onyx, £3 10s.; a gold pencil case and penholder, with gold pen, £3 6s.; a fine gold scarf pin, with pearl mount, £5; a silver snuffbox, finely chased and engraved with crest, £3; a handsome and elegantly-chased electro-plated epergne service, with engraved glass flower vases and fruit dishes, £44; a meerschaum pipe in case, presented by GUILDFORD ONSLOW, Esq., £1 10s. Lots 13, 14, and 18, consisting of an elegant silver filagree card basket with lid and handle, a lady's card case *en suite*, and two paper knives, £10 10s. It was stated that all the articles fetched double their trade value.

MORE VILLAINY.

SIR,—The whole of the clothing worn by Sir ROGER TICHBORNE when condemned, and bought at a sale (by order of the Directors of Prisons), being in my possession, I shall be glad to hear if you would like to purchase them.

Awaiting the favour of a reply, I have the honour to remain, sir, yours obediently, J. H. LAZARUS.

NOTE.

The Defendant having been convicted simply of a *misdemeanour*, we are of opinion that to convert to their own use and sell his clothes was *an act of robbery* for which the Directors of Prisons (whoever they may be) are amenable to Law. But every wrong seems to be committed against TICHBORNE with impunity. We believe the above act of insolent rapacity will evoke a tempest of public indignation. Will our "tame cats" in Parliament ever arouse themselves to enquiry? We recommend Lady TICHBORNE to bring an action for the price of her husband's clothing ; and thus expose this nefarious transaction.

STRONG LANGUAGE IN THE LAST CENTURY.

The following "strong language" was used by Lord ERSKINE at the trial of Captain BAILLIE, against Earl SANDWICH, the First Lord of the Admiralty, and the Rev. Mr. HACKWELL, one of his tools :

"In enumeration of delinquents, the Rev. —— looks round, as if he thought I had forgotten him. He is mistaken ; I well remember him, but *his* infamy is worn threadbare. Mr. MURPHY has already treated him with that ridicule which his folly, and Mr. PECKHAM with that invective which his wickedness, deserve. I shall, therefore, forbear to taint the ears of the Court further with his name ; a name which would bring dishonour upon his country and its religion, if human nature were not, happily, compelled to bear the greater part of the disgrace, and to share it

SCENES IN THE LIFE OF ROGER TICHBORNE.

No. 56.—DESCENDING THE ANDES.

amongst mankind. . . . Indeed, Lord SANDWICH has, in my mind, acted such a part——

[Here Lord MANSFIELD, observing the Counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him that Lord SANDWICH was not before the Court.]

"I know," resumed the Counsel, "that he is not formally before the Court; but, for that very reason, *I will bring him before the Court.* He has placed these men in the front of the battle, in hopes to escape under their shelter. But I will not join in battle with them; their vices, screwed up to the highest pitch of human depravity, are not of dignity to vindicate the combat with *me.* I will drag *him* to light, who is the dark mover behind this scene of iniquity. I assert that the Earl of SANDWICH has but one road to escape out of this business without pollution and disgrace, and that is, by publicly disavowing the acts of the Prosecutors, and restoring Captain BAILLIE to his command. . . . But if, on the contrary, he continues to protect the Prosecutors, in spite of the evidence of their guilt, which had excited the abhorrence of the numerous audience that crowd this Court; if he keeps this injured man suspended, or dares to turn that suspension into a removal, I shall then not scruple to declare him an accomplice in their guilt, a shameless oppressor, a disgrace to his rank, and a traitor to his trust. But as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord SANDWICH'S virtues, or the influence of his fears, I do most earnestly entreat your lordship to attend to the malignant object of the Prosecution, and to defeat it."

To this circumstance Mr. ERSKINE has himself been heard to impute all the success that followed. On retiring from the Bar, no less than thirty briefs were offered him. But if this language had been used before COCKBURN, that Great Advocate would have been at once disbarred—and "ruined for life."

CHARLES LAMB, AND "EDWARDS THE SPY."

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—The observations made by you regarding BELLEW, and others of the False Witnesses in the TICHBORNE Trial, induce me to send you a copy of some very curious lines by CHARLES LAMB, which I have extracted from an old number of the 'Examiner' newspaper. They may (apart from their interest as bearing upon the Cato-street informer) be deemed remarkable in showing how vehement may be the political expression of a

writer who certainly was no more a politician than CASTLEREAGH was a poet and essayist.—Your obedient servant, X.

"Close by those ever-burning brimstone beds
Where BEDLOE, OATES, and JUDAS hide their heads,
I saw great Satan, like a sexton, stand,
With his intolerable spade in hand,
Digging three graves. Of coffin-shape they were,
For those who, coffinless, must enter there
With unblest rites. The shrouds were of that cloth
Which CLOTHO weaveth in her blackest wrath.
The dismal tint oppressed the eye that dwelt
Upon it long, like darkness to be felt.
The pillows to these baleful beds were toads,
Whose softness shocked—worms of all monstrous size
Coil'd round; and one uncoil'd which never dies.
A doleful bell, inculcating despair,
Was always ringing in the heavy air;
And all about the detestable pit
Strange headless ghosts and quarter'd forms did flit.
Rivers of blood from dripping traitors spilt,
By treach'ry, stung from poverty and guilt.
I ask'd the Fiend for whom these rites were meant,
'These graves,' quoth he, 'when life's brief oil is spent,
When the dark night comes, and they're sinking bedwards,
I mean for CASTLES, OLIVER, and EDWARDS.'"

BOWKER.

The following letters show the pains which this lawyer took in writing letters calculated to excite *prejudice* against the Defendant.

TO MAJOR NORBURY.

Winchester, March 15, 1867.

SIR,—I take the liberty of informing you how the matter as to ROGER TICHBORNE progresses.

Last week CASTRO, the person calling himself ROGER agreed to meet Mr. and Mrs. RADCLIFFE at Croydon. The latter is ROGER'S Cousin, and with whom he was in love before he left for South America.

Mr. and Mrs. R. went accompanied by Mrs. NANGLE (an aunt of ROGER'S), Mr. R. and Mrs. NANGLE only went in. CASTRO, thinking he was to see Mr. and Mrs. R., accosted Mrs. NANGLE as "KATE," being Mrs. RADCLIFFE'S name, conversing with Mrs. NANGLE, taking her for Mrs. R. This circumstance alone would stamp him as an impostor. However, they agreed to meet him again as on Wednesday last. Mr. RADCLIFFE, Mrs. NANGLE, and two other ladies went; CASTRO totally failed to recognise these two ladies, though they were relatives, and most intimate with ROGER. They addressed him in French, as they were accustomed to talk with ROGER in that language; CASTRO could neither speak nor understand that language.

The interview ended by Mr. RADCLIFFE and all the ladies being *positive* that he is not ROGER TICHBORNE, but an impostor; and so told him *to his face*.

Thinking you might like to know these facts, I intrude. The Family have always been satisfied that this man is an impostor. I am, Sir, your very obedient servant, F. BOWKER.

TO MAJOR NORBURY.

Winchester, March 30, 1867.

SIR,—The man assuming the name of TICHBORNE had an interview last Friday with Major PHILLIPS, late of the Carabineers. The Major writes me word that he took him by the coat to sit in a chair at the window, placing himself opposite to him. The Major could not recognise him, and he failed in every question put to him about the regiment; so the interview ended by the Major telling him that he could not shake him by the hand as the man he had known as TICHBORNE, for he was *not* the man.

Probably you may remember that Major PHILLIPS knew TICHBORNE *well*, from the time of joining till leaving.—Apologising for thus intruding, I am, Sir, your very obedient servant,

F. BOWKER.

TO MAJOR NORBURY.

Winchester, July 13, 1867.

SIR,—In reference to my former letter, relative to the person claiming to be Mr. TICHBORNE, who was in the Carabineers with you, *I beg to observe that the Examiners of the Court of Chancery have fixed the 6th and 7th of August next, to take his examination in London.*

We have been endeavouring for a long time to catch a glimpse of him—but he will not be seen by the Family—only by persons the particulars of whom he previously obtains.

Some gentlemen have been to Croydon, and waited days without success.

The object of my now troubling you, is to let you know that the Family are still confident that he's an impostor, *and the examination, we trust, may tend to prove it.* We have parties in London who have known him for years in Wagga-Wagga and elsewhere—when he was in the lowest condition—such as it is almost impossible to believe a Baronet, with a large income at his sole disposal, would succumb to, without a reason.

Should you be leaving England, may I beg the favour of your address?—I am, Sir, your obedient servant,

Major NORBURY. F. BOWKER.

Lord Chief Justice BOVILL commented on the conduct of HOLMES in sending copies of the affidavits to Witnesses. BOWKER has done quite as bad, as appears from the preceding letters. Lord Chief Justice COCKBURN, at the second Trial, did the same, but neither had a word of reproof for BOWKER.

TO SERJEANT-MAJOR QUIN.

Winchester, Sept. 24th, 1867.

SIR,—Major FORSTER informs me that he met with you, and I have been anxious for your address—relative to the person claiming to be Mr. ROGER CHARLES TICHBORNE, who, doubtless, you remember in the 6th Dragoon Guards.

The Claimant keeps out of the way of the Friends of the TICHBORNE Family and those Officers who knew him; however, in August last, General JONES, Captain POLHILL TURNER, Major PHILLIPS, Captain FRASER, and others, obtained a sight of him and were fully convinced that he is not Mr. ROGER TICHBORNE—the real man left home on good terms with all his Family and Friends, to travel in South America, writing to them constantly up to the day he sailed on board the 'Bella' from Rio to go to New York. The ship was wrecked, not one of the crew have been heard of, or ROGER, till this man comes forward; he says he cannot remember the name of the ship or captain that picked him up—with eight others—but is quite certain that these eight others have never sent to their wives and families; thus we are perfectly satisfied that the Claimant is an impostor. Major FORSTER tells me that you have a book with the real ROGER'S handwriting in it. I should be very much obliged if you could lend it me. It will come safe done up in a parcel by rail, directed to me thus:

Mr. F. BOWKER, Solicitor,
Winchester, Hants;

And I shall be pleased to pay any expense you incur in so doing. Will you be so good as to write me a line with your correct address?—I am, Sir, your obedient Servant,

F. BOWKER.

Serjeant-Major QUIN.

COLONEL CUSTANCE TO F. BOWKER.

20th October.

DEAR SIR,—You must not count on me as an evidence in favour of your Client, as I saw the Claimant to the Baronetcy of Tichborne a few days ago in Salisbury, and I am certainly under the impression that he is the same man who was in the Carabineers with me. I cannot account for his having forgotten French and other things, but I recognised the face, and do not think he is an Impostor, though I would not swear to his identity.—Believe me, yours truly, J. M. CUSTANCE.

F. BOWKER, Esq.

LADY TICHBORNE'S DESCRIPTION OF HER SON, SIR ROGER TICHBORNE.

SIR,—The following has been handed to me by Mr. PRIVETT, the son of Lady TICHBORNE'S foster-sister:

"Personal description of ROGER C. D. TICHBORNE, sent to me by Lady TICHBORNE at a time when she thought her life not worth a day's purchase, partly to prevent her Family being worried, and to secure a welcome to her son at any time, as the Family did not believe her or the information she had received.

"Age, 29 years; height, 5ft. 9in. barely; hair, dark brown, pertaining to black.

"Face, upper part most like his mother.

"Shoulders rather high, or rounding; walk, rather hurried or shambling; hands, small, like his mother's, and some of the knuckles slightly dimpled; thumb, a slight defect of top, injured by playing with the handle of iron vice when near four years of age.

"Indelible scar on his head, caused by a fall while climbing, which nearly cost him his life.

"A large brown mark, where a person would place their hand on their hip for ease.

"*A peculiar malformation of person, called by persons attending on him in his childhood, 'His seal,' or 'God's mark.'*

"No concealment or adornment of person.

"Disposition kind, very forgiving; can bear insult or injury with meek resignation.

"Education, considering means provided, deficient through loss of memory.

"Fond of travelling to fresh places; fond of sporting and gambling, and when excited, or his personal safety or his means in danger, rather reckless."

Feet not mentioned.

"Small or minor marks on his body.

"An adept at riding, fishing, shooting, and dancing.

"A quick perception, and clever portrayer of character.

(Signed) "W. PRIVETT."

If this is not an exact description of what, in many respects, he proved himself to be, under the very eyes of both Judges and Jury, I say there never was any proof of anything brought before any Judge or Jury this kingdom through.—I am, Sir, yours &c.,

T. E. WILLIAMS.

Mr. ONSLOW says that some "mysterious connection," such as was never well known, existed between Lady TICHBORNE, the Mother of the Claimant, and her foster-sister. We ourselves have no knowledge of, and can throw no light upon this dark subject. The authenticity of the foregoing Statement having been questioned by two writers in the papers, Mr. WILLIAMS wrote to Mr. PRIVETT upon it, and received the following reply:

Seymour-place, Dec. 29th, 1878.

To Mr. WILLIAMS.

SIR,—In answer, "Have I the paper sent me by Lady TICHBORNE?" I am sorry to say, no, I have not. But I can swear it bore no date, and was signed in her usual way, "FANNY;" and I am certain that the contents were exactly the same as I have given you. It was put with other correspondence* from the time of R. C. D. TICHBORNE'S birth, and destroyed by my mother, who then had no idea of the value of such a document.

Question No. 2.—Can you remember the date?—Yes; the end of the year 1857, about six weeks before R. C. D. T.'s twenty-ninth birthday.

Also a letter sent by Lady T., from a mother of one of the poor fellows that were saved from the 'Bella Esperancia,' and a true copy of her son's letter, with a note of explanation by Lady T., wishing me at the same time to privately mark her letter (which I did), being convinced that R. C. D. T. was not drowned. I would have gone as promised, at his mother's desire, to find him. My correspondence ended at the death of my mother, May, 1864.

Great caution was required at that time, but they hoped they had traced him at last, their greatest fear being that he was sold in bondage. (Signed) W. PRIVETT.

Upon this reply, Mr. WILLIAMS well comments thus. We may add that *we* have no doubt of the authenticity of the paper sent by Mr. PRIVETT.

"Now, Sir, I quite feel the force of what 'O. B. P.' says as to this being legal evidence, and I think it only just to myself to state that when I copied what PRIVETT before gave me, I was under the impression that he had the original document in Lady T.'s own handwriting. Such appears not to be the case, and I can but deplore it. But though this is so, and its value greatly lessened in consequence, supposing that our Law Courts only received undoubted documentary evidence, I submit that it is every whit as good in law as the draft of the declaration, which was both *unsigned and undated*, and delivered before no one, at no place. This document was received against him. Why, then, should not this evidence, which can be proved and checked in every particular, be received for him?

"The sauce that is good for the goose is good for the gander. 'O. B. P.' says the value of this evidence depends upon its being capable of the most ample verification. I say it is capable of such verification to the fullest extent, much of which both Judges and Jury witnessed with their own eyes, day by day of the Trial at Bar.

"You will observe that Lady TICHBORNE writes this, years before any trials of any kind were thought of even. Before he was found at all, and therefore without any reference to any of the unparalleled villanies that have since been perpetrated by both small and great, rich and poor, titled and untitled, professional and lay. But Lady TICHBORNE, I understand, had a presentiment that she would be murdered, and her papers stolen. The first of which we have every reason to believe was the case, and that belief is fully shared as we know by Sir ROGER himself. We also know that her boxes were broken open and rifled, it is said, by GOSFORD'S order. The fact is, the more time glided away, the more dealings there were with the property, and the greater the inducements to both the Family and the Romish Church to conspire, if not to kill, and by the abuse of the law defraud the rightful heir.

"Again, if what 'O. B. P.' properly calls legal proof, documentary, of this description was in existence, it would only be confirmatory, and one among hundreds of others equally strong. Well, then, say it does exist, how is it to be made use of? Our enemies surround the Crown, the source of all justice—we cannot get at the Sovereign. The idea of approaching the Crown through Mr. CROSS is as much a farce, a delusion, and a snare as the responsibility of the Ministers thereof. Have we not had ample proof that the only responsibility existing is the retention or resignation of office? Have we not seen a Conservative Ministry in the place of a Liberal, and have not the people been denied every semblance even of consideration by both, and has there been the slightest attempt to satisfy the people, who have sent up their petitions signed by thousands upon thousands? Have not our law courts obeyed instructions to *bark* every enquiry following the lead of Mr. CROSS? And why? Because unfortunately it has had no one of sufficient influence; sufficient voting power in the House to enable them to endanger the tenure of power by the Ministers upon other questions, if they did not do that which was right in this. Poor, blind, almost naked justice, has no friends amongst the rich and great, especially when the honeyed subtle lies of the Prosecution, for years before either Trial, were sown broad-cast, and left to take root and grow for years before any refutation could come. When it did, so firm a root had these tares taken, that it has been only a few comparatively of those who were not subjected to the baneful sophistry of the false, whose minds are clear enough to see the truth even when presented to them in the clearest light.

"Of course we know that villanies are sometimes allowed to be for a time triumphant, for some grand purpose beyond our knowledge and perception in the dispensations of Divine Providence, but it is very hard to say 'Thy will be done.'—I am, Sir, yours, &c.,

THOS. E. WILLIAMS.

"33, Moore Park-road, Fulham, Jan. 4th, 1879."

The following singular passage in a letter from BAIGENT to Lady DOUGHTY, dated Nov. 10, 1866, refers (we think) to the subject of the Malformation:—"What you have read in the 'Daily News' corresponds pretty well with what the French gentleman said. He was a second-class passenger—and as the others travelled first-class, they did not come much in contact, and the Frenchman was under some disadvantages. Lady Dowager asked him no end of questions, some of them exceedingly foolish. The amusing part of the affair I cannot trust to pen and ink."—See *Trial*, Vol. II. page 331.

* PRIVETT evidently means dating from Sir ROGER'S birth.

JOHN HOLMES.

The following letter explains the reasons why HOLMES gave up the TICHBORNE Case:

34 Clement's-lane, Lombard-street, March 7th, 1868.

MY DEAR SIR ROGER,—The great labour and anxiety which I have undergone during the last twelve months in the transaction of your business has so weakened my health that it has become an imperative necessity for me to ask you to be good enough to relieve me from further conduct of it, although I cannot in justice to myself or you continue to be so active in the protection of your interests as I have been. I shall at all times be most happy to do whatever I can for you and yours. Indeed, nothing will give me so much pleasure as to afford your new Solicitor every information and assistance in my power for the purpose of enabling you to succeed in obtaining possession of those rights to which I firmly believe you are justly entitled.—With every good wish for your prosperity, believe me, faithfully yours, JOHN HOLMES.

JULES BERRAUT.

57, Lincoln's-Inn-Fields, London, October 5th, 1871.

THE TICHBORNE TRIAL.

SIR,—Your letter of the 20th June last, addressed to Her Majesty's Britannic Consul at Rio, was sent to the Lord Chief Justice presiding at this Trial, and his lordship forwarded a copy to us, as the Solicitors to the TICHBORNE Family acting against the Claimant to the Estates, who is a person from Australia.

We are very thankful that your letter arrived, and it is most important, for the sake of Justice and Truth, that you should come by the next mail to London to the above address. We will pay all your expenses for loss of time. Your evidence will be most valuable in disclosing the truth of various statements made by the Claimant, and which do not agree with the accounts that the Family know of CHARLES ROGER TICHBORNE.

I enclose a photograph of TICHBORNE, also one of the Claimant. You will easily pick out your old travelling companion.

Will you be sure and bring with you your Journal or Diary, ROGER'S Passport, and every letter, or memorandum, or document that may relate in any way to TICHBORNE, or his travels, or his communications with you,—or that will assist your memory? Pray do not leave anything behind.

The Claimant has to make out his Case and give all particulars he can as to TICHBORNE. Therefore, you should on no account let him, or his friends or agents, see any of your letters and documents—but those letters, your diary and documents, will enable you to test the truth of the Claimant's statements. If he is the real TICHBORNE all the information you can give must be known to him, and, having occurred so shortly

before he was shipwrecked, cannot have escaped his memory, but must have been cherished by him. If, on the other hand, he is an impostor, your information to us will be most valuable.

We assert, and hope to prove, that the Claimant is not TICHBORNE. The Claimant has been in South America for two years and upwards prior to TICHBORNE'S time, so he is well acquainted with parts of that country. He was living with one THOMAS CASTRO at Mellipilla for a lengthened period. We have no time to spare; and at the earnest request of TICHBORNE'S Family we beg you will come by the first packet. The Trial goes on in November, and you will be in time to be of essential service in establishing the truth.

None of the Family can trace any resemblance to TICHBORNE in the Claimant.

Fully trusting to see you by the next packet, and all your expenses shall be paid, we are, your obedient servants,

DOBINSON & GEARE.

To Sig. JULIO BERRAUT, National Guard, Garrison Uba, South America.

We have sent a copy of this letter to Mr. HURD, the Consul at Rio,—also a copy of evidence given by Claimant relative to South America, &c.

LONDRES.

L. C. J. COCKBURN pretended that he could not see *Londres*. in a document written by the Claimant. (See Vol. III., page 106.)

In the following (printed by the Government), it is seen:

R. C. TICHBORNE TO F. J. BAIGENT.

Essex Lodge, Croydon, Feb. 4th, 1867.

MY DEAR FRIEND FRANCIS,—I have pleasure in saying we arrived quite safe and that my head is a good deal better, but it was very bad all the way to Londres. VERNON sent me his likeness. I don't know whether you know him or not, but i think you do. Has soon Has i have wrote this I start for dover to meet Mammar so I hope in my letter to-morrow I shall be able to acquaint you of her safe arrival at Essex Lodge. Hoping to hear from you my dear FRANCIS by return of post.—I remain, yours truly,

R. C. TICHBORNE.

"TITCHBOURNE."

One of the things offered in evidence against Sir ROGER was that he once was about to spell his name "TITCHBOURNE." In the letter that follows his father does the same:

Tichborne Park, Dec. 3, 1856.

MY DEAR FRANCIS BAIGENT,—I send you a line to beg you will come over to Tichborne and pass a few days with us, and I shall expect you to-morrow.

I cannot promise that our carriage will be in Winchester to-morrow, owing to the deplorable state of the roads, but you can accompany the Rev. Mr. CONNOLLY, who will come here by the coach, and my little carriage will meet you both at the Burrough and bring you both, with your carpet bags to Titchbourne, and I shall expect you will remain till Monday.—Yours very truly,

JS. F. DOUGHTY TICHBORNE.

DR. LIPSCOMB.

Alresford, January 31st, 1867.

DEAR SIR,—To-day I met with a man, who used very frequently to valet Mr. ROGER TICHBORNE and who knew him for a long time, and being not quite certain in my own mind whether the marks on the left arm which I mentioned to you were on ROGER'S or on some other persons whom I had seen in Tichborne House, I asked him if he was aware of their presence and he told me that certainly he had not any marks when he last saw him. Under this information I am inclined to believe that I am mistaken on this point, and I thought it best to say so to you, that this part of my information may not be acted upon.—In haste, Yours truly,

J. K. LIPSCOMB.

F. BOWKER, ESQ.

THE BOOT OF ARTHUR ORTON, AND THE FOOT OF SIR ROGER TICHBORNE.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—I am an old shoemaker, and, as such, I am anxious to state a few facts, which have never yet been explained to suit me, and which, I think, have never yet been brought in a true light before the public. I am one who has been robbed out of a portion of my rights through want of money, and ever since Dr. KENEALY pleaded the Case of TICHBORNE before an unjust Judge, every week, poor as I am, I have had 'THE ENGLISHMAN.' And now, with your kind permission, I will try to show what never yet has been shown; and I will try to prove what never yet was proved, though one of the Jurymen, and the great Judge COCKBURN himself, have had ample time and opportunity to do so; both of them, like ours, as they are, have slunk away from both Right and Duty. I well remember the words of the Dr. when he told Judge COCKBURN that hundreds in this country were robbed out of their rights for want of means. So was I, and, with tears running down my cheek, often have I been led to exclaim that no man was ever robbed in a more bare-faced manner than Sir ROGER TICHBORNE and his great and truthful Pleader at the Bar, Dr. KENEALY himself, who is the only person to whom I, and thousands more in this country, are looking up to for Truth, Justice, and our rights, as Englishmen. And we have often said that had there been no TICHBORNE Trial, the Doctor would never have been known by the people, and it is in the all-wise womb of a Divine providence that TICHBORNE and the Doctor, for a time, shall suffer, but nothing in comparison to what an unjust Judge, or an adulterous, shall yet suffer; yes, there are Judges who have yet to be judged, and found Guilty.

Now, sir, I come to the point, and begin to treat the real case that has been before my mind's eye for more than twelve months. Was there not a practical shoemaker, acted as a Juryman at the Trial of Sir ROGER TICHBORNE? Did not Judge COCKBURN once hold in his hand an *eleven's* last from which ARTHUR ORTON'S shoes were made? Did not another shoemaker swear that Sir ROGER TICHBORNE only took or wore a *seven's* boot? Why, then, did the Juryman who was said to be a practical shoemaker neglect his duty, by omitting to insist on the two lasts being placed side by side on the Judges' Bench, so that all in the Court could see them and be satisfied, by showing to all present how impossible it would be for ARTHUR ORTON to thrust his long bony foot into the *seven's* boot belonging to TICHBORNE? Did not Sir ROGER, like a true and honourable gentleman, lift up his foot so as all might see the difference? Shame upon the Juryman and shoemaker who thus neglected his duty at this point of the Trial, by not measuring the foot of Sir ROGER and showing to the rest of the Jurymen, the Judge, and all in Court the great difference between a seven's boot, and a boot made from an eleven's last. Let every man favourable to TICHBORNE just ask some neighbouring shoemaker to show him a seven's and an eleven's last, place them side by side, and you will at once be convinced that, however the Judge in his summing-up might talk about tampering with TICHBORNE'S thumb, dyeing his hair, &c., &c. I wonder the Judge did not say that the feet of Sir ROGER had been cut, and made so much shorter, or that some blacksmith had drawn out the long feet of ARTHUR ORTON. Did not Judge COCKBURN say that he would look at this special point by-and-bye? And I suppose he is looking at it even up to the present time, as it has never yet been thoroughly cleared up or explained. As an old shoemaker I feel disgusted with this part of the Trial, and think that the son of St. Crispin, who sat there as a Juryman, ought to have stopped the Trial at once, or otherwise have asked the learned Judge how in the name of common sense he would account for this great *lie* being allowed to pass in a High Court of Justice, for it proves at once, from the different sizes of the feet alone, that Sir ROGER TICHBORNE could not be ARTHUR ORTON. And if Judge COCKBURN, and the clever shoemaker and Juryman, had these four sizes in difference in the length of the feet, or had an inch and a quarter cut from the feet of ARTHUR ORTON, and stitched to the end of their nose, I guess they would be richly served for their dastardly conduct as to this part of the Trial. I am too old and too poor, or I should like to have been in the great procession last Easter Monday, carrying my own flag containing the boot of ARTHUR ORTON and that of Sir ROGER, side by side, and thus have brought a blush to the cheeks of both Judge, Jury, and all concerned in the imprisoning of the Claimant,—I remain, yours truly,

RICHARD HARDACRE.

11, Rochdale Road, Bury, Lancashire.

GENERAL UNFAIRNESS OF THE TRIAL.

How utterly impossible it was for poor TICHBORNE at his Trial, or Dr. KENEALY since his "ruin for life," to get justice or reparation, is proved more and more conclusively every day by the facts that crop up; and which almost take away our breath. Until we read the following we did not know that the powerful RICHMOND and GORDON Family were connected with those arrayed against Sir ROGER. But so it is. In a weekly paper we read:

"Lady ALEXANDER LENNOX comes into £8,000 a year by the much regretted death of her brother, Mr. TOWNELEY; and as her father, Colonel TOWNELEY, left her £60,000, she may be considered as tolerably well provided with this world's goods."

Colonel TOWNELEY'S sister-in-law, Mrs. TOWNELEY, was the lady who gave the noted evidence at the Trial against TICHBORNE: and his third daughter is married to Lord O'HAGAN, one of the most violent anti-TICHBORNITES in the House of Lords. This is English Justice! And yet we have plenty of honest and honourable gentlemen in both Houses of Parliament and in Society, who talk to us in perfect good faith of the "Justice" which TICHBORNE received at both his Trials. So among other tricks resorted to by the Prosecution in the TICHBORNE Case to gain over the Press upon their side, was the presentation (free) to the Summary Writers for the morning papers of the four printed volumes of the First Trial, which we need not say were of considerable value as records, and which Dr. KENEALY vainly asked for—almost suppliantly begged for—but without success: Mr. LOWE strenuously refusing. It was by means of these that those writers were enabled to make their daily Summaries so spicy: for they had them nearly off by heart, and they were always enabled to present some extracts from them in their comments on the evidence of the various Witnesses; and if they did not tally even to the minutest particular with the printed volumes, they used to sing and crow, and clap their hands, and dance in triumph.

Thus these garblings and misrepresentations assiduously repeated day by day, and commented upon at lunch and dinner, and tea and supper, by the various superficial persons who never read anything but those one-sided Summaries, and were wholly coloured by them, gradually produced that fearful weight of false prejudice and passion which enabled the Family and the Judges towards the close to crush Sir ROGER with overwhelming force.

MR. SEGAR.

IT was TICHBORNE'S sad misfortune to lose by death, or through his own want of means, the testimony of many who could have given valuable evidence in his favour. Among these was Mr. SEGAR, a gentlemen of fortune, who was brought up with TICHBORNE at Stonyhurst, and who was present when Lord BELLEW tattooed the late Mr. BERKELEY, and swore it was TICHBORNE, as dead men could tell no tales. The following was written by Mr. SEGAR to Father GUY, one of the Jesuit Priests who gave evidence for TICHBORNE:

Preston, April 3rd, 1868.

MY DEAR FATHER GUY,—You wish to know the impression which my two short interviews with the person calling himself ROGER CHARLES TICHBORNE produced as to his identity. I will briefly tell you. I cannot get rid of the idea that he is the right man. The likeness undoubtedly grows upon me. Excepting for his great size, and his increased age, I see nothing about him different from the ROGER CHARLES TICHBORNE of 1847. Judging from his character also as appearing by his conversation, he seems to be a person of similar disposition to what ROGER might have been expected to possess. If he had been introduced to me as the undoubted Sir ROGER, and no one had hinted at any reason for uncertainty as to his identity, I should not have had any suspicion that he was not the right man. I should certainly have said that he was very much changed in size and with years, and should probably not have immediately recognised him; but notwithstanding contraries, I cannot help entertaining the notion that the person calling himself the Sir ROGER is in truth my former Stonyhurst somewhat eccentric companion.—Yours respectfully,

The Rev. R. E. GUY. WM. FRAS. SEGAR.

See another Letter from Mr. SEGAR, *ante* page 269.

SUICIDE OF A TICHBORNE WITNESS.

TO THE EDITOR OF THE 'ENGLISHMAN.'

SIR,—In Dr. KENEALY'S splendid Reply to the Glasgow Requisition, he alludes to the "terror" with which the Witnesses for his unhappy client, the Claimant, were filled, when they saw how other Witnesses were treated; and he mentions the case of the Yorkshire Baronet, Sir TALBOT CONSTABLE, who, though he has a fortune of at least £10,000 a year (none of which I hear he has devoted to the support of his godson), was afraid to come forward and swear for the man in whose identity he had not a particle of doubt. Now, if great men like this were frightened, can you feel "surprised" if men in a humble grade absolutely went out of their senses when they were summoned to appear as Witnesses? One of these was a friend and relation of mine, a poor fellow named CHARLES LEE COCKLES, of Brighton-road, Surbiton. He gave his evidence to the lawyer, having recognised Sir ROGER fully, not only by his face, but by a mark upon his hand, the remains of a wound which he had received while descending from a mulberry tree in Sir EDWARD'S garden. This poor fellow was dogged by detectives from the lawyer's office, and they so worked upon him night and day after that, calling on him, threatening him, and worrying him without ceasing, that he lost his wits through downright fear, and so he laid down on the metals at Surbiton station, and was cut to pieces by a train. This was in September, 1873. I enclose a newspaper report of the inquest. Who is answerable for his blood? Can some of your Jesuit readers, who are good casuists, tell me? —Yours, SAMUEL LEE.

See *Trial*, Vol. VI., page 140.

SIR,—Observing a letter from Mr. SAMUEL LEE, of Hull, on the above subject in the 'ENGLISHMAN' of this week, I beg to let you know what Sir ROGER TICHBORNE told myself on the subject of this scar. It will be seen that Mr. LEE was in error; and I think it ought to be cleared up. I happened to be at MAULL'S (the photographer) one day. I had known Mr. COCKLE by sight for many years, and I was interested when I heard he was to give evidence. As several persons were at MAULL'S, and all talking about the Trial, I took the liberty of saying to Sir ROGER, "You have lost another important Witness, Sir ROGER, in the poor man COCKLE, who destroyed himself on the railway, a short time since. Was he not a gardener at Alresford, when you met with an accident?" He replied, after an instant's thought, "No, he was employed at Tichborne, and it happened when I was quite a lad. I took up the man's scythe one morning when he had gone to breakfast, and began to sharpen it with the hone, and I jammed my finger down on the edge of the scythe, and there's the scar" —holding up the first finger of his right hand, on which a scar was plainly visible. This answered to the account of the incident which I had from a person to whom COCKLE related it. Sir ROGER must have been quite unprepared for my suddenly asking him about the Witness; and all present were struck by the lazy way in which he related the circumstances, and imitated the action of sharpening the scythe. It must have convinced any impartial person of his identity. If your correspondent Mr. LEE will make enquiry, he will find perhaps that he has been in error in his recollection.—I am, sir, yours sincerely, E. M.

TICHBORNE'S MANNERS.

If TICHBORNE did not associate much, as insisted upon by Dr. KENEALY, *ante* page 294, with the gentlemen of Hampshire, he must have learned his manners from some association with gentlemen to which it is perfectly impossible that ORTON could have had access. We cite the following as evidence of the Defendant's manners. We can endorse every word of it as being true: and the fact is, no more perfect gentleman in manner than the Defendant could often be found.

"On the occasion of the most enthusiastic welcome of Sir ROGER TICHBORNE and Mr. WHALLEY, M.P., to Newcastle, they were," says the 'Newcastle Daily Chronicle,' of July 9th, 1872, "sumptuously entertained at a dinner provided by the Committee, and presided over by Mr. R. H. IRELAND; Mr. BOWDEN, the Secretary of the Committee, acting as Vice-Chairman. By the courtesy of the Chairman and his colleagues, we were permitted, at a later period of the evening, to join the party, which consisted of some twenty gentlemen. Having been introduced to the Claimant, who sat on the left of the Chairman, Mr. WHALLEY occupying the seat to his right, we accepted the invitation to place ourselves next to the remarkable man who for so long a period has occupied so large a share of public attention. With such an opportunity of examining the features and deportment of the Claimant, we were enabled at our leisure to contemplate and form some opinion of the extraordinary personage beside us. That the result of that examination presents nothing that conflicts with the pretensions of the heir to the Tichborne Baronetcy and estates may at least be affirmed. No portrait of the Claimant that we have seen by any means does justice to the intellectual and well-bred air that we find in the original. It is, perhaps, difficult for any man who has the misfortune to weigh six-and-twenty stone to present a very refined appearance; but, notwithstanding this drawback, *we do not hesitate to assert that, externally, the Claimant has all the marks and attributes of an English gentleman.* His eyes are large and intelligent, and the peculiar 'twitching,' of which we have heard so much, is plainly observable; the nose is regular and well-formed; and the loose and baggy cheeks which form so prominent a feature in all the photographs we have seen we fail to discern in the man himself. *His manners and bearing are irreproachable, exhibiting a happy combination of frankness and gentleness which, if not irreconcileable with, are at all events very rarely found in conjunction with, low habits and associations.* He seemed at ease in what, after all, must be admitted to be a very trying and difficult position; for he knew quite well that amongst those present were some who, although they were not convinced that he was an Impostor, were by no means satisfied that he was Sir ROGER TICHBORNE. So far from exhibiting any of the *gaucherie* we expect to find in a man of low habits, the Claimant was evidently perfectly at ease; and all the two hours we spent in his society we saw nothing whatever to which the most fastidious observers of etiquette could object. *Polite, but not obtrusively so; anxious for the comfort of others, without oppressing one with well-meant but tiresome attentions; we found the Claimant a most agreeable and gentlemanly companion.* There was apparently no undue eagerness to create a favourable impression, though all the courtesies of good society were scrupulously observed."

MR. BAIGENT.

The following letters are evidence that Mr. BAIGENT did not believe in the Claimant until he saw him.

F. J. BAIGENT TO C. K. SCOTT MURRAY, ESQ.

Winchester, October 3rd, 1866.

DEAR SIR,—Your letter only came to hand last night, on my return home from London. There is something so very droll about this story of the discovery of ROGER TICHBORNE, as to make it perfectly laughable, not to say ridiculous. Certainly people are very credulous, but in a case like this they ought to give their minds a little reflection—surely it does not bear looking into? When I heard the history of this discovery, I thought it amusing, and that it might have been "a trap" set for Mr. TURVILLE; but I do not believe for one moment that the person in question is the son of the late Sir JAMES TICHBORNE, and if Mr. TURVILLE'S description of him is *correct*, it places the question beyond all doubt, as the person so described cannot be the ROGER TICHBORNE I knew, and knew, too, most intimately. I suppose something more will be heard very soon of this personage, and of his claiming the Title and Estates. There are very few people who knew much of ROGER, and I don't think his father and mother had seen much of him for some years before he left England—he left in latter part of 1852, or early in 1853, for America.

F. J. BAIGENT TO LADY DOUGHTY.

Winchester, Dec. 12th, 1866.

DEAR MADAM,—If I had heard anything definite I should have written instantly to you. When the 'Seine' came into the Southampton River last Saturday week, late in the afternoon, I had a friend who undertook to go down with the pilot boat so as to be the first to communicate with the vessel. As she hoisted the yellow flag, indicating that the yellow fever was on board, he was unable to go aboard; but as soon as they reached the vessel he received from one of the officers a list of all the passengers, and came to Winchester on the same evening to tell me that nothing was known of Sir ROGER or his party.

There was another French vessel arrived at St. Nazaire on Monday last from Vera Cruz, and this makes the fourth or fifth.

I do not know the address of your niece (Sir ALFRED'S widow) at this present time; and can only say that had I known it I could have been the means of putting a letter into her hands, which might have thrown some light on the subject. As it was it has gone into the hands of the Dowager. It was a letter posted at Paris on Monday or Tuesday week, addressed to Lady T. (which inclined me to think it might have been written by some French person), nevertheless I must say that *if it was a letter from this "Sir* ROGER," *I should have no hesitation in believing him to be the right man, so close was the resemblance of the hand.* It came directed to Tichborne House, and it naturally occurred that could the Dowager have left Paris for London, and that on their arrival (on Monday) via St. Nazaire at Paris for London, they found her gone—hence the letter, and to prevent its going to the *Dead Letter Office* I wrote her London address upon the envelope; and I believe it has since reached her at Paris, kindly take care that this information does not go beyond the Castle. Since then, I hear that the Dowager has written from Paris, and has directed all letters for her son to be sent to an address in Paris (not her own), and I do not remember it. I have also been told that Sir ROGER is in Paris, but I do not know how far to rely on it. Probably you know more definite particulars, and I shall be glad to hear how matters are working as far as your information goes. Mind what I have said is not known to any other person in Winchester, nor would I communicate it to any one else but yourself. I have also seen a letter of enquiry after Sir ROGER from a person who says he has received an invitation from him. I should very much like to see the Photograph that has been sent. The matter, I fear, will be a very unpleasant affair, and if trouble comes of it the Dowager is much to be blamed. No one can approve of her mode of proceeding—be it ROGER or not ROGER. One thing has struck me very forcibly. I have had a description of this person from three different and independent sources (people who have seen him), and they all agree, yet that agreement is such as to shew (taking it to be accurate) that it cannot be ROGER. The few pages about the TICHBORNES, duly appeared in the 'Herald' and 'Genealogist' of last month. I shall be glad to hear from you, there is no question but that this protracted affair will soon come to a crisis. —Believe me, yours sincerely,

FRANCIS JOSEPH BAIGENT.

Hon. Lady DOUGHTY, Caverswall Castle, Cheadle, Staff.

LADY DOUGHTY TO MR. BAIGENT.

Caverswall Castle, Cheadle, Staffordshire, Sunday, 18th.

DEAR SIR,—I am very much obliged to you for your letter received this morning, for I have been much wishing to hear from you again. I think you read my letter wrong so far, that I only mentioned the Dowager Lady TICHBORNE had told me of having seen Mr. MOUNT some time ago, but I have not written to him, though I should like to hear his adventures with the Frenchmen from you. I do not like to trouble him as it is so many years since I saw him. I should feel very much obliged to you to send me the Winchester paper that has the account you mention, they intend to publish this week, and also the one in which my own letter was published, for the editor never sent a paper to me; so until I received your letter to-day I knew not if it had been put into the paper or not—being four miles from a town here, and only seeing the 'Times' besides the Catholic papers; I do not see the daily penny papers. I will repay to you any papers you think of sufficient interest on this subject to forward to me. *It does appear to me, with you, that the whole affair has been badly managed, but who is to act? I suppose if this person really arrives and claims the property, that the Chancellor must look to the interest of his ward, the infant Baronet; but I know nothing from private sources. I know* D. Lady TICHBORNE *did give her directions to Paris, and subsequently gave me reasons why she wished him to come there in the first instance. I thought there were many reasons why this should have been forestalled by the other party by some competent person being sent to recognise him on first landing, but I know not if any measures have been contemplated.* All private affairs coming before the public ought to be avoided, as exaggerations or misrepresentations are ever the result. I have written to my servant in town to get the 'Daily News' of the 16th, which you mention—The 'Times' have named a German Steamer bringing passengers from New York, in landing 20 at Havre and many for Southampton this last thursday (I think). In my letter to the 'Hampshire Chronicle' I purposely said as little as possible, but I did not like to be supposed to have published BOGLE'S letter, quite uninteresting to the public. I have been dissappointed this week by receiving a letter from Messrs. GLYN & Co. saying that the Union Bank at Sydney had answered their letter merely, that they would attend to their order not to pay the money to any person but ANDREW BOGLE (Senior), yet not naming what they had done or answering whether he was alive or not. I have a second letter from GLYN to day, to say they would write the next mail for further enquiries to be made. I think I told you that not having heard from BOGLE since June 1864 I had desired enquiries to be made through the bank previous to this affair of the supposed ROGER. I was a *little* inclined to believe, after I received the letter now wanted, but I now feel convinced it was ANDREW his son, pretending to write as if from his Father to deceive me. I again return you many thanks. —Your obliged,

K. DOUGHTY.

SIR R. TICHBORNE TO F. BAIGENT.

Essex Lodge Croydon Feb. 6th, 1867.

MY DEAR FRANCIS,—According to promise I again write to say that everything seems to go well Mr. HOLMES received a letter from CULLINGTON yesterday, showing very much the white feather I do hope this affair may be settled without any law—for after all it will be a great expense to both sides, and you do not know how annoying it is to be watched by these d—— officers there is one taken up his quarters in a house opposite Mamma and he follows me everywhere I go I hope you will meet me at Alresford on Friday has I wish to have a long talk with you.

I hope you will write and let me know how things look at Winchester I shall get it on Friday before I start. Mamma has not yet arrived at dover I cannot make out what is detaining her.

I expect a telegram every minite Lady T. sends her regards and hopes soon to have the pleasure of your acquaintance.

Hoping my dear friend BAIGENT soon to see or hear from you i remain, yours Truly,

R. C. D. TICHBORNE BART.

F. J. BAIGENT, Winchester.

LETTERS FROM LORD RIVERS.

The following Letters, it is thought may be appropriately printed here:—

Sunday, August 31.

MY DEAR DOCTOR,—The Miss ONSLOWS' object to go into the witness box on *religious* grounds, thinking it wrong to take an oath, but would be quite willing to give other assurance or make any statement which would not involve them in what they consider so wicked a proceeding as *swearing!* The longer I live the more wonderfully appears to me the notions some people have of religion. However, ONSLOW has told me they could be induced to come if it were a matter of life or death to TICHBORNE, and I always thought anyone was obliged to attend if a subpœna were served. I met a limb of the law yesterday who had always been dead against TICHBORNE. He was loud in your praises, and said you had proved yourself already the greatest man at the Bar and that the two Australian Witnesses coupled with the others you had put in, left it clear to any impartial mind, that this man could not be ORTON, though with the customary folly and perversity shown by all, he still believed he was an impostor! Surely you are justified in calling the attention of the Bench to the novelty and unfairness of HAWKINS, BOWKER, and Co. talking to the Jury. I do not believe COCKBURN dare allow the continuance of such glaring irregularities if you *respectfully* call his attention to it. There is a very strong feeling in the country generally about this Trial, and what is left of JOHN BULL will rise against unfairness even when practised by so great a man as the Chief.—Yours sincerely,

RIVERS.

Bessborough-street, Sunday.

MY DEAR KENEALY,—I can't find a military surgeon who has been in India, as it is difficult to put one's hand on such a person in a moment—at Chatham or some of the depots it would be easy enough, but I have failed in my efforts here. Whatever you do, do not call HISCOX, and close your Case as soon as you can, calling no more Witnesses except such as prove the 'Osprey' to have been in Melbourne, and the medical evidence. TICHBORNE will tell you to-morrow morning why this line of conduct is in my opinion (since what he has told me) imperative. TICHBORNE is very unwell to-day and far from being himself. Dr. WILSON put him to such tortures yesterday by compressing a band round his head with a tourniquet that he is regularly upset and it is painful to see him. I know I am right for many reasons in my strong advice to you as to the closing of your Case.—Yours sincerely,

RIVERS.

Sunday-night, September 14th.

My dear Kenealy,—What I now sit down to write to you probably means, and will result in nothing, but still I like to tell it you before going to bed. Granville's sister was my brother's wife, and he used to stay here in their life for months at a time. He and I through life have been very intimate, and I have always asked him to come here since I have been in possession. He telegraphed to me from Lord Lansdowne's, Friday night, to know if he might come yesterday and stay till Monday, when he is due at a not far distant house. He is alone here with only myself and wife, and after dinner to-day he began upon the Trial and asked me if I still believed. I did not lose the opportunity to speak my mind, and to the best of my abilities showed him how impossible it was for Tichborne to be an Impostor—how unfairly the whole Trial had been conducted, how through your intercession a petition that Cocky should not try the case had been stopped, how I and others could have proved the feeling Cocky had, and which feelings he had shown in his judicial capacity, and how incontestably the evidence had proved the falseness of the Orton theory. He had not a word to say, and I know he was sucking my brains. I do not for a moment wish you to believe that he came here for that purpose, but being here (and always having an eye to business) he took advantage of his visit. I gave it him hot both as regards the Prosecution by the family and his government, and did not mince matters about the unfair means resorted to, including my conviction that Lucie was a plant. Some few things in Tichborne's favour that I don't think Granville was likely to, or did know, I took care to enlighten him upon, and I am *sure* that if he had a hostile opinion (which he took care not to admit) that I have lessened it, and that what I have told him will be passed on by him to others. He talked of you as the greatest poet of the present day, as well as being one of the greatest scholars. He considered you a great advocate but thought you were too prolix and wearied the Jury. He was in Court some day lately. Never mind what he thinks. Do what *you* think best. All I am sure of is that he is satisfied from my description of Tichborne he cannot be a low Wapping butcher, and whilst I am equally sure all I have told him will be repeated to his colleagues, I also think he has grave doubts as to the Defendant not being the genuine article.—Yours ever,

RIVERS.

Friday night, October 31st.

My dear Kenealy,—I dined to-night in this club (Carlton) in company with a gentleman who met Lush *yesterday* and who told him that the Court would adjourn to-day. My friend imparted this information in conversation, and having said it, was anxious for his name not to be mentioned. For this reason I withhold it, but if you think it desirable or advisable in your speech to show how completely the Prosecution and the Bench are of accord, you are at liberty to mention the fact of Lush having intimated the adjournment a day before it took place (of which he ought to have known nothing), and couple my name with the information. Like Hawkins he cannot deny it, and if he does I will bring my friend to the front, and I have evidence of his having told *me*. The more you show to the world how completely the Bench and the Prosecution have worked together, the more (in my humble opinion) you strengthen the Case by showing the determination to set aside all customary rules of legal fair play.—Yours sincerely,

RIVERS.

CORRESPONDENCE OF THE RIGHT HON. JOHN BRIGHT, M.P. AND MR. GUILDFORD ONSLOW ON THE TICHBORNE CASE.

FIAT JUSTITIA RUAT CŒLUM.

"After the decision of a cause, the freedom of inquiry into the conduct and opinions of the Judges, is one of the noblest and best securities that human invention can contrive, for the faithful administration of justice."—Lord Mansfield.

MR. JOHN BRIGHT'S LETTER.

In reply to a Sheffield Correspondent, who had written to Mr. Bright, asking him to support Mr. Whalley in his endeavours to obtain a free pardon, or protection, for a man in New Zealand who claims to be Arthur Orton, the Right Honourable gentleman has sent the following letter:—

132, Piccadilly, London, July 15th, 1875.

Sir,—You may rely upon it that Arthur Orton will not come from New Zealand. During the Trials £1,000 was offered for him, and nobody could produce him. It was a large bribe, and I only wonder it did not bring over a score of Ortons. Arthur Orton is in Dartmoor, and nobody, I suspect, knows this better than some of those who are pretending to expect him from New Zealand. I have read all the evidence and all the speeches of both Trials, and the Summing-Up of the Lord Chief Justice. This last I have read again during the last month, and I have read more than once the evidence before the Chili Commission. I know, therefore, as much about the matter as you can know, and much more than is known by nine out of ten of those who are clamouring for the release of the Convict at Dartmoor. I have before me now the handwriting of the real Roger Tichborne, of the real Arthur Orton, and of the Convict, and this alone is sufficient to convince any man of common sense and observation what is the truth in the Case. If you could see this handwriting, and if you could examine the evidence of the Chili Commission, the evidence of the Convict's own friends, to whom he referred for proof that he was what he pretended to be, you could hardly fail to be convinced that your belief in the Convict is wrong and your sympathy with him wholly misplaced. I mention these two points as conclusive against him. There are many other points in the evidence on the two Trials which are fatal to his claim. He seemed to know the names of two dogs, but he did not know the name of his own mother. Mr. Turville, in Australia, asks him a test question whether his mother was stout or thin. He said, "Stout—a tall, large woman." It is not denied that Lady Tichborne was leanness itself. Miss Nangle said she was more like a skeleton than anything else, and this was not contradicted by anyone.

If you can believe in a man who did not know his own mother's name, and who stated that his mother, who is admitted to have been leanness itself, was "stout—a tall, large woman," when he first came forward in Australia, and when he had no opportunity of picking up information and facts to support his Case, I fear you are of that credulous nature that it may be useless to reason with you.

I can take no part in the proceedings of Mr. Whalley and his friends. To me the convict in Dartmoor is the greatest criminal of our time. His crime has extended over many years. It is most base in character, and includes in it almost every crime for which evil men are brought to punishment.

You are much impressed, I dare say, by the declarations of those who traverse the country creating agitation on this question. I must ask to be permitted to value my own judgment at least as highly as that of these persons. One of them is believed to have invested money largely in the Case, and pecuniary interest is not favourable to an impartial decision; another suffers from a complaint which I call "Jesuit on the brain," and this seems grievously to distort almost everything he looks at; and the third is the lawyer who failed, after a Trial which lasted 188 days to convince three Judges and twelve Jurymen, or any one of the Judges or of the Jurymen, that his client was anything but an impostor and a man most odious from his character and his crimes. I shall be glad if you and such as believe with you will not ask me to correspond further on a question about which only honest men, who are in entire ignorance of the facts, can, in my view, differ in opinion.—I am, most respectfully yours,

JOHN BRIGHT.

Mr. Mark Harrison, 1, Elliot-road, Sheffield.

MR. GUILDFORD ONSLOW'S REPLY.

Sir,—I have just read in your journal of the 19th of July, a letter of Mr. Bright's, headed, "The Case of Arthur Orton," and have also read your article on the same, in which you are pleased to call it an "able letter." Now, I don't pretend to have much ability, but I flatter myself I do know more of the Tichborne Case than my friend Mr. John Bright, and if you will kindly give insertion to this letter in your next edition as a reply, you will confer on me a personal favour, as I am most anxious that the public should hear both sides of the question. Mr. Bright's arguments in his letter of such great ability consist as follow, and I will take them one by one:—

First of all—"You may rely upon it that Arthur Orton will not come from New Zealand."

Secondly—"That Arthur Orton is in Dartmoor."

Thirdly—"I have read more than once the evidence taken before the Chilian Commission, the evidence of the Convict's own friends."

Fourthly—"I have before me the handwriting of the real Roger Tichborne, the real Arthur Orton, and of the Convict; and this alone is sufficient to convince any man of common sense and observation what is the truth of the Case."

Fifthly—"He seemed to know the name of his dogs, but he did not know his Mother's name."

Sixthly—"To Mr. Turville he stated his Mother was tall and stout; it is not denied that Lady Tichborne was leanness itself."

Such, then, are the six points in the Case which induce Mr. John Bright to declare the Claimant an impostor. Now, let us see how his reasons hold water.

Mr. Bright says Arthur Orton will not come from New Zealand. This being no argument—merely assumption—I meet it by saying, Suppose he does, what then?

Secondly—He says Arthur Orton is in Dartmoor. This, again, is no argument, and I meet it by saying that the Dowager Lady Tichborne, Mother of the Claimant, gives her evidence on oath, as follows:—

"I am as certain as I am of my own existence, and distinctly and positively swear that the Plaintiff is my first-born son, the issue of my marriage with Sir James Francis Doughty Tich-

BORNE. His features, disposition and voice are unmistakable, and must, in my judgment, be recognised by impartial and unprejudiced persons who knew him before he left England in the year 1853.

(Signed) "HENRIETTE F. TICHBORNE."

"Sworn at the Record Office, Chancery-lane, 27th June, 1867, before me, FREDERICK BEDWELL."

In this belief the mother lived: in this belief the mother died.

Now, I am one of those fools and fanatics who believe the mother's recognition in preference to the assumption of the Right Honourable JOHN BRIGHT, the Member for Birmingham.

His third reason, about the Chilian evidence. I should here point out the key to that Commission in the fact of Mr. STEVENS, clerk to Sir ROGER'S solicitor, having ridden on horseback to Melipilla late at night, arriving somewhat prematurely. He states he distinctly overheard, whilst in bed behind the screen, some of those engaged in the Case say, "remember, ARTURO ORTON, and no TICHBORNE."

The British Government only brought over two Witnesses from South America, and, as money was no object to them, I have a perfect right to assume they would have brought over all the Witnesses in the Chilian Commission had they considered them trustworthy.

Donna HAYLEY appeared in the Witness-box for the Prosecution, and swore the only Englishman that ever appeared at Melipilla arrived there six years after her marriage with Mr. HALEY (an Englishman), and she was married in 1847. This would bring the visit of the Englishman to 1853, the very year the Prosecution proved ARTHUR ORTON to have been safe and sound in Australia, and the very year that Mr. ROGER TICHBORNE was seen by MOORE, his valet, riding towards Melipilla, then only forty miles distant.

As to the other Witness for the Prosecution—THOMAS CASTRO—he came boldly into the Court of Queen's Bench, walked up to the Claimant, shook hands with him, and acknowledged him as the Mr. TICHBORNE he had known in Melipilla, upon which Dr. KENEALY challenged him into the box, but the Crown would not allow him to be called, on the plea "he was mad." Had this THOMAS CASTRO been examined we might have heard something more about "*Remember* ARTURO ORTON *and no* TICHBORNE."

I may here add that I have before me a letter, written by an attache to the Chilian Embassy to Mr. ANTHONY BIDDULPH, stating that he is the nephew of Don RAYMOND OZACHAR, who entertained ROGER TICHBORNE the gentleman, and not ARTHUR ORTON the sailor, at his own house in Melipilla, and that his uncle had offered to give his evidence, but it was refused; and this gentleman of a Chilian Embassy in his letter expresses his astonishment that our Government should listen to such questionable evidence in the Chilian Commission, from people whose words would not even be taken in any Court of Law in Chili.

Mr. BRIGHT pins his faith to the handwriting, and so do I. I hold a large correspondence, both of young TICHBORNE and the Claimant, and I defy Mr. BRIGHT, or any one else, to say they are not written by one and the same person.

As regards the signature and character of the writing, allowing for time, they are identical.

I much doubt the fact that Mr. BRIGHT has any of the real ARTHUR ORTON'S letters; those produced in Court I believe to be forgeries,* like the Pittendreigh correspondence. Every disinterested person to whom I have shown the correspondence admits the extraordinary similarity of the handwriting. Some of it is in Birmingham, where your readers can judge for themselves. Lady TICHBORNE, the mother, swore as follows: "About March, 1866, I received a letter from my son ROGER, dated from Wagga-Wagga; I instantly recognised his handwriting."

I say again, I infinitely prefer, not only the mother's recognition of his handwriting, but my own judgment to Mr. BRIGHT'S, not forgetting the fact that the Claimant's signature was admitted to be identical with the signature on ROGER TICHBORNE'S will by the experts at Doctor's Commons and by his London Bankers.

Mr. BRIGHT'S fifth reason why he is an impostor is, because he remembers his dogs' names but not his mother's.

Now if Mr. BRIGHT will refer to the eighth day of the summing up—February 10th, 1874—he will find that almost immediately after the fictitious will was made, before money was advanced, Mr. GIBBES takes the Claimant to a solicitor, Mr. MILPORT, to get him to sign a statutory declaration, at the same time warning him of the consequences of seven years' penal servitude, if he put anything in it he knew to be untrue. The Claimant replied, "Oh, yes, I quite understand that: I am willing to make the declaration."

It must be here observed that the original declaration is not forthcoming. A strange thing this that the Lord Chief Justice of England should allow this secondary evidence. But, however, here we have it, and in the Lord Chief Justice's own words, as follows:—

"I, ROGER CHARLES TICHBORNE, of Tichborne Park, in the County of Hampshire, but lately residing in Wagga-Wagga, do solemnly and sincerely declare that I was born on the 5th day of January, 1829, that I am the eldest son and heir to Sir JAMES FRANCIS DOUGHTY TICHBORNE, of Tichborne Park, by HENRIETTE FELICITE TICHBORNE, his wife."

Here we see no "HANNAH FRANCES," and no "Tichborne Hall."

The Lord Chief Justice goes on to say, commenting on this statutory declaration, "Assuming him to be ROGER TICHBORNE, this document is not open to question;" and I must say with the Lord Chief Justice it is not open to question, and it is difficult to imagine, after reading this document, how the will was otherwise than fictitious, meant to prevent people knowing who he really was; a common and natural feeling in Australia amongst gentlemen who have filled menial positions, as the Claimant had; and proved to have been the feeling of the Claimant from his first letter to his Mother, where he reminds her that the last letter he wrote to her was on the 22nd April, 1854, and begs her to reply to him under cover to Mr. GIBBES, *because he does not wish people in Australia to know who he is.*

As regards Mr. BRIGHT'S sixth and last reason, I would say that Mr. TURVILLE'S supposed statement has never yet been verified. I believe the Claimant never called his Mother stout and tall. He denies having done so; but this at all events is certain, that whatever the conversation was that passed between Mr. TURVILLE and the Claimant, it was of that assuring description that he was no impostor; that Mr. TURVILLE'S representations to the Bankers alone caused the latter to advance money to the Claimant, which would hardly have been the case if the Claimant had called his Mother stout and tall, when he (Mr. TURVILLE) knew she was short and thin.

I deeply regret Mr. BRIGHT did not meet me before his constituents at Birmingham to discuss this Case. Had he done so, his presence might possibly have called forth more cheers than his name did when I mentioned it at the public hall in his own borough. I can only say I shall, at all times, and in all places, have much pleasure in meeting Mr. BRIGHT on this Case: and apologising, as I do, for the unavoidable length of this letter,—I beg to remain, Sir, your obedient servant,

GUILDFORD ONSLOW.

The Grove, Ropley, July, 21st, 1875.

MR. ONSLOW'S REPLY TO THE SAME LETTER IN 'THE TIMES,' WHICH THE EDITOR REFUSED TO INSERT.

TO THE EDITOR OF 'THE TIMES.'

Ropley, Alresford, July 19th, 1875.

SIR,—Having observed in your Journal of to-day, a letter from Mr. JOHN BRIGHT on the TICHBORNE Case, I venture to ask your kind permission to do me the favour of inserting this reply in your next edition, on the old English principle of fair play, an element sadly wanted in this great Case.

Mr. BRIGHT commences his letter by a bold assertion "that he may rely upon it that ARTHUR ORTON will not come from New Zealand"—well, suppose he does come, what then? the Right Honorable Gentleman states £1000 was offered for him *during the Trial;* this was not the case, Mr. SPOFFORTH offered Mr. CATOR (who knew ARTHUR ORTON and the Claimant as two separate individuals) that sum to find him *before the Trials commenced.* Since the last Trial, I have advertised in Australia, offering £1300, Lord RIVERS £700, and Mr. QUARTERMAINE EAST £300, for his production in London, after proving himself to be ARTHUR ORTON *to the satisfaction of the Government;* so we may possibly hear of him even in New Zealand—time will show.

Mr. BRIGHT goes on to say "ARTHUR ORTON is in Dartmoor": now, Dowager Lady TICHBORNE, Mr. ANTHONY BIDDULPH, Count and Countess LOUSADA—the mother and cousins—swear he is not; and I infinitely prefer their practical proofs of his identity, to Mr. BRIGHT'S more theoretical ideas. The Rt. Hon. Gentleman seems to lay great stress on the handwriting, *so do I.* I hold a large correspondence of the Claimant's and letters of Mr. ROGER TICHBORNE in early days; everyone who has compared these letters pronounces them identical; the experts at Doctor's Commons, and at the London bankers they also pronounce the signature of the Claimant identical with that of Mr. TICHBORNE; and I have in my possession four signatures—two of Mr. TICHBORNE in 1849, and two of the Claimant's in 1873—I will place them together and defy Mr. BRIGHT to tell which is which. I very much doubt if there is a real letter of ARTHUR ORTON'S in existence, for after the PITTENDREIGH letters we must be cautious. As to the Chilian evidence, *the key* to that is found in the fact of Mr. STEVENS, the Solicitor's Clerk, who went out to Chili with the Commission, having arrived prematurely at Melipilla, when behind the screen, hearing those engaged in the Prosecution say "*remember* ARTURO ORTON, *and No* TICHBORNE." I have before me now a letter written by Mr. ANTHONY BIDDULPH by his friend Don RAYMOND OZACHAR'S nephew, of the Chilian Embassy, in Paris, who states his uncle entertained Mr. TICHBORNE, a perfect gentleman, in Melipilla, in 1853, and not A. ORTON, a sailor: we have, besides, DONNA HAYLEY'S evidence that the *only* Englishman that ever visited Melipilla, *visited there six years after her marriage, which was in* 1847; this would bring the visit to 1853, the very time ARTHUR ORTON was known to be in Australia, and ROGER TICHBORNE known to have been within forty miles of the place. Don RAYMOND OZACHAR goes on to state that

* The sisters of ARTHUR ORTON have seen these letters and pronounce them forgeries.

SCENES IN THE LIFE OF ROGER TICHBORNE.—No. 57.—FIRE IN A SOUTH AMERICAN FOREST.

his uncle offered testimony to the Commission, *and it was refused:* and this gentleman expresses his surprise at the end of his letter, that the English Government should accept the testimony of such Witnesses as were brought from South America, and that no Court of law in Chili would have depended on them; "*I also mention this as conclusive evidence*" as regards the Chilian evidence, *which was not worth the paper it was written upon.*

He seemed, says Mr. BRIGHT, to know the names of two dogs: I ask, was that all—did he not know the interior of Burton Constable—his mother's handwriting before the letter was opened by Mr. GIBBES—and did he not, *only a few days after signing the fictitious Will* (according to the Lord Chief Justice's own showing), sign a statutory declaration calling his mother by her right and proper name? Mr. TURVILLE'S statement is merely hearsay evidence contradicted by the Claimant, and as the said interview between the Claimant and Mr. TURVILLE caused that gentleman to believe he was no impostor, it appears his having called his mother stout instead of thin had no effect on Mr. TURVILLE.

When ROGER TICHBORNE left his mother, in 1852, Lady TICHBORNE was anything but thin, although she became so in after life.

To me, the Convict in Dartmoor is the most ill-used man in Europe. People do not generally give their money to a cause unless they are pretty well assured beforehand that they are right. How much money, I should like to know, has Mr. BRIGHT expended in his time on agitations? I might as well say to him, as he does to me, that those who invest money and have pecuniary interest, are not favourable to an impartial decision, and I beg to remind Mr. BRIGHT, what he seems to forget, that a man, who is born and bred a gentleman, does not usually allow his pecuniary interest to interfere with his word or honour. I deeply regret Mr. JOHN BRIGHT did not accept my challenge to meet me before his Constituents. Had he done so, we might have had a satisfactory debate on this Case, and the presence of the Rt. Hon. Gentleman there might have been received better than his name was on that occasion. I shall have much pleasure in meeting Mr. BRIGHT *on any platform in England, to argue this Case*, and our hearers shall be our judges.—I have the honour to be, your obedient servant,

GUILDFORD ONSLOW.

DR. KENEALY AND MR. BRIGHT.

('ENGLISHMAN,' Nov. 27, 1878.)

The following appeared in Friday's morning papers:

"MR. J. BRIGHT ON THE TICHBORNE CASE.—Mr. JOHN BRIGHT has been asked by Mr. ROUSE, of Mexborough, whether there is any truth in the statement made by a public lecturer of Nottingham, named TYLER, that Mr. BRIGHT had proposed conditions to Dr. KENEALY, compliance with which would ensure his restoration to his former positton in society. Mr. BRIGHT replying, said that 'the whole story is false from beginning to end. It is one of the thousand lies which have been invented by Knaves, and believed by Fools, to assist in supporting the most gross and wicked case of Imposture which has in our time come withiu the cognisance of our courts of justice.'"

We make no observation on the especial virulence which marks this paragraph. It is such as usually characterises all that comes from the enemies of TICHBORNE. We only point out to our readers that it was published on Friday, so that it might be copied into all the London and provincial papers of Saturday; and thus, in the latter case, the contradiction would not appear till a whole week had elapsed; and thus the Lie would live for that period. We insert Dr. KENEALY'S answer. Nobody who knows him will doubt *his* truthfulness.

DR. KENEALY TO THE EDITOR OF 'THE TIMES.'

Lancing, Sussex, Nov. 15, 1878.

SIR,—I have read a paragraph in your Paper of this day, which calls for a reply. It is worded in rather a passionate style; but with this I have nothing to do.

Soon after my return to Parliament in 1875, Mr. BRIGHT honoured me with a very long conversation, lasting for considerably more than an hour. He was pleased to say that he had intended in the TICHBORNE Debate, which took place on the preceding 23rd of April, to comment on the treatment to which I had been subjected, and to express his regret that I had been disbenched, dispatented and disbarred. He added that he had forgotten it; but would refer to the matter on the first appropriate occasion when he addressed the House.

He said, that although he had had no personal communication with (the then) Mr. DISRAELI, that he had no doubt I could be restored to my former position on three conditions.

First, that I was to apologize to the Judges for language which had appeared in the 'ENGLISHMAN.'

Second, that I was to publicly abandon that Paper, with which I was believed to be connected, and to discontinue its publication.

Third, that I was to give up TICHBORNE'S Cause.

He said that he was to breakfast on the following morning with Mr. Recorder GURNEY, and would discuss the question with him if I consented.

I declined to do so.

I have the honour to be, Sir, your obedient servant,

E. V. KENEALY.

('ENGLISHMAN,' Nov. 30th, 1878.)

When we published last week, we had not seen the following curious correspondence between Mr. J. ROUSE, of Mexborough, and Mr. JOHN BRIGHT, M.P.:—

"To J. BRIGHT, Esq., M.P.

"RESPECTED SIR,—The importance of the subject must be my apology for troubling you with this letter. A public lecturer, named TYLER, of Nottingham, has delivered three lectures in this town upon the TICHBORNE Case and Magna Charta, and having been chairman at two of the meetings, I was requested to spend the Sunday afternoon with the lecturer. In course of conversation your name was mentioned, when Mr. TYLER made the following extraordinary statement, viz., that you (Mr. BRIGHT) had sought an interview with Dr. KENEALY in one of the Committee rooms of the House of Commons, and said to him that you were very desirous to see him restored to the position in society which his talents entitled him to hold, and that if he would comply with the following three conditions, he might rely upon being reinstated in his position at the Bar, and become a respected member of the House of Commons. The first condition: That he should sever his connection with the 'ENGLISHMAN'; second: that he should give up the TICHBORNE agitation; third: that he should make a humble apology to Lord Chief Justice COCKBURN. Dr. KENEALY'S reply to these overtures was, 'Mr. BRIGHT, you must never speak to me again on the question.' If you think that the subject is of sufficient importance to you, seeing Mr. TYLER stated that Dr. KENEALY authorises him to make the above statement public, would you kindly reply and state how much, if any, truth there is in it?—I have the honour to be, respected sir, faithfully yours,

"JOHN ROUSE."

The following was Mr. BRIGHT'S reply:—

"Rochdale, November 12th, 1878.

"DEAR SIR,—I can easily understand your letter. I never sought an interview with Dr. KENEALY in one of the Committee rooms of the House of Commons or elsewhere. I never made any such proposition to him as you refer to, or any other proposition. I never submitted conditions to him as to severing himself from the 'ENGLISHMAN,' or giving up the TICHBORNE agitation, or making an apology] to the Chief Justice, nor did he desire me not to speak to him again on 'this' or any other question.

"The whole story is false from beginning to end. It is one of the thousand lies which have been invented by knaves, and believed by fools, to assist in supporting the most gross and wicked case of imposture which has within our time come within the cognisance of our courts of justice.

"You may make any use you please of this reply to your letter in answer to the lecturer, should he venture on any public statement of the nature of that made to you in private conversation. —I am, respectfully yours,

"JOHN BRIGHT.

"Mr. JOHN ROUSE, Mexbro', Rotherham."

Nothing, of course, can be more unqualified than this denial. Dr. KENEALY, it is insinuated by Mr. BRIGHT, is a Knave, who invents lies, to be believed by Fools, and all for the sake of a gross and wicked imposture, &c., &c., &c. This does not sound very credible; and we are quite sure that those who know Dr. KENEALY will not believe that he is capable of inventing anything. He is a strictly truthful man; and one of the greatest blots in his career, in the eyes of COCKBURN and that crew, was that he could not and would not chime in with their doctrines in defence of Falsehood during the TICHBORNE Trial. But Mr. BRIGHT'S letter, in answer to Dr. KENEALY, is couched in a very different style. Here it is:—

TO THE EDITOR OF THE 'DAILY NEWS.'

SIR,—Dr. KENEALY in a letter in your paper of yesterday, professes, I presume, to correct a statement I made a week ago in a letter to Mr. ROUSE, of Mexborough. In writing to Mr. ROUSE, I said I had never sought an interview with Dr. KENEALY in one of the Committee rooms of the House of Commons or elsewhere; that I never submitted any conditions to him as to his connection with the 'ENGLISHMAN,' or giving up the TICHBORNE agitation, or making an apology to the Chief Justice; and that Dr. KENEALY never told me not to speak to him again on the question. Dr. KENEALY contradicts my statement, and gives you an account of the matter strangely at variance with the truth.

The debate on the TICHBORNE Case took place on the 23rd of April, 1875. On the evening of the 17th of June following, Dr. KENEALY asked me if I would speak with him, and I followed him to near the door behind the Speaker's chair.

He said I had treated him with respect since he had come into the House, and he therefore took the freedom to speak to me about his case. He referred especially to what he had suffered in being disbarred, which he deemed a great injury, shutting him out from his profession and his means of living, and he consulted me as to whether I could be of service to him in having him restored to his place in his profession. I told him that I thought his conduct blamable in a high degree, but that a

punishment such as he had been subjected to appeared to me extremely harsh—a punishment for life, cutting him off from his professional employment for ever—and I expressed my willingness to speak to some persons whose influence might be useful to him, and I mentioned particularly the late Mr. RUSSELL GURNEY, a man of great kindness and of great influence. I asked Dr. KENEALY what could be said on his behalf. Would not the lawyers who disbarred him expect some retraction of the grievous charges he had made against the Bench? He did not deny this, and did not appear to consider it unreasonable. Not a word was said about his giving up the 'ENGLISHMAN,' or the TICHBORNE agitation, or of any apology to the Lord Chief Justice. But I said—Can you ask for restoration to your profession with no retraction of the charges you have made? The conversation lasted a quarter of an hour, perhaps a little more.

On the morning of the 18th I was about to leave my lodgings to go to the Middle Temple to call on a lawyer there, who has since been raised to the Bench, to consult him as to whether anything was possible in the Case. Before I left a note reached me from Dr. KENEALY, saying that he was grateful to me for the kind disposition I had shown to serve him, but that on further consideration he had concluded that it was better to proceed no further in the matter.

The case stands thus. I did not seek any interview with Dr. KENEALY; he asked my advice and my help, if I could be of service to him. I made no conditions, but suggested that a great if not an insurmountable obstacle would be in the way, in my view, if he was not prepared to make some retraction of the charges he had made. I said it was not likely the lawyers who had disbarred him would agree to restore him unless he withdrew the charges he had made. Dr. KENEALY says that I told him I would discuss the matter with Mr. RUSSELL GURNEY if he consented to the conditions, and that he declined to do so. There is not a word of truth in this. It was not till the following morning that I received the note from Dr. KENEALY wishing the matter to proceed no further; I did not therefore visit the eminent lawyer in the Middle Temple. Two days afterwards I breakfasted with the late lamented Recorder, but the case was then at an end.

I regret to trouble you with so long a letter about a matter in which the public can have little interest.—I am, very respectfully yours,

Rochdale, Nov. 19, 1878. JOHN BRIGHT.

We do not wonder that Mr. BRIGHT "regrets," &c., &c., and evidently wishes to drop the subject; but we think Dr. KENEALY'S answer is conclusive.

DR. KENEALY'S REPLY.

TO THE EDITOR OF THE 'DAILY NEWS.'

SIR,—I have read Mr. BRIGHT'S letter, in reply to mine published in your Paper. For that gentleman's sake I am exceedingly pained at its contents. Those who know me will have no doubt either of my truthfulness or accuracy on matters of fact. Those who know Mr. BRIGHT may form any opinions they please. For the reason given by that gentleman, I will enter into no angry controversy with him, but simply repeat that what I have published is true: and that Mr. BRIGHT'S answer is erroneous.

One observation you may allow me to make. Mr. BRIGHT represents me as being most anxious to be restored to the position of which I had been cruelly deprived. This must be so, as it is a question of the deepest import to myself and to my children. But he suggests no reason why, notwithstanding so much anxiety, after talking with him, "I wished the matter to proceed no further." Is it not obvious that it was because of something which had occurred in conversation? What that something was, is not revealed in Mr. BRIGHT'S reply: I submit therefore that it is almost self-evident that it was for some or all of the reasons which I have mentioned and which it is possible that Mr. BRIGHT has forgotten. Will Mr. BRIGHT publish the letter which he received from me? That *may* throw light upon the question; which, as affecting Mr. BRIGHT, is one in which I think "the public" have much interest. He underrates himself if he supposes that it is not so.—I have the honour to be, Sir, your obedient servant,

Lancing, Sussex, Nov. 20th, 1878. E. V. KENEALY.

We think the above will satisfy most persons: and we re-echo its sentiments of sorrow for Mr. BRIGHT. That gentleman after expressing everywhere his sympathy for Dr. KENEALY, and the ruin brought upon him by CAIRNS and the Judges, all of a sudden veered round; quarrelled with the late Mr. WHALLEY because he did not abandon TICHBORNE; and finally induced him, after repeated conversations, to desert and turn round on Dr. KENEALY—the member for Peterborough giving the absurd reason to the world for his conduct, that Dr. KENEALY had brought the adventures of BAKER before the House; had spoken and voted against the £60,000 grant to the Prince of WALES, for the drunken expedition to India; and had not called the ORTONS at the Trial—a thing that Sir ROGER had expressly asked him *not to do*.

Mr. BRIGHT has sent a rejoinder to Dr. KENEALY'S last letter. We reprint it here. We do not understand what Mr. BRIGHT means to convey by the words, "I will not go into the reason." If he knows he should have stated it, and not left it to guess. We are not aware of any "reason" for Dr. KENEALY'S conduct, other than this, that he could not consent to Mr. BRIGHT'S propositions.

TO THE EDITOR OF 'THE DAILY NEWS.'

SIR,—Dr. KENEALY asks for the letter he wrote to me. I send you a copy of it, which I will thank you to publish with this note.

I have abstained from quoting much that Dr. KENEALY said to me in the conversation he refers to, and I will not go into the reason why he came to the conclusion never again to think of the subject,—but the reason, I suspect, is not far to seek or to find.

I have written only to deny statements which are absolutely false and which have been made apparently on the authority of Dr. KENEALY and are supported by him.—I am respectfully yours,

Rochdale, Nov. 24, 1878. JOHN BRIGHT.

[ENCLOSURE]

Dr. KENEALY TO Mr. BRIGHT.

DEAR SIR,—I thank you for your conversation with me yesterday, but I have made up my mind never again to think of the subject.—Yours truly,

June 18, 1875. —— E. KENEALY.

SIR,—As the public have by this time well considered the extraordinary correspondence that has taken place between Mr. JOHN BRIGHT and Dr. KENEALY, I think it is but a common act of justice to the latter gentleman to state that within a few days, if not hours after the alleged conversation took place, Dr. KENEALY related to me every word that passed, and his account of it, and of the propositions made to him by Mr. BRIGHT, *coincide precisely* with the published statement in the newspaper of Dr. KENEALY. I expressed my astonishment at the time, that Mr. BRIGHT should have made such extraordinary proposals, and I praised Dr. KENEALY for having instantly refused them. But I must confess my astonishment at Mr. BRIGHT'S excuses, when I read in his letter to the 'Daily News' his opinions on the TICHBORNE Trial—a Trial which he admits he never took the trouble to read. Now, any man who ventures to form a public opinion on a Case of which he is ignorant, is quite capable of making the alleged propositions, as spoken by Dr. KENEALY, and then of denying them. I trust you will give insertion to this letter in your next issue as an act of justice to Dr. KENEALY.—I am, Sir yours truly,

Nov. 26th, 1878. GUILDFORD ONSLOW.

[This confirms the opinion we had already formed from a perusal of the correspondence. We have long thought that Mr. BRIGHT was a superficial, impudent, unscrupulous, self-opinionated, and much over-estimated man, but until now we scarcely believed that he would condescend to downright lying.—EDITOR 'Yorkshire Independent.']

REWARD OF HONESTY.

The undermentioned Persons, engaged against TICHBORNE, received from GLADSTONE, DISRAELI, and the rest of the Cabal, the following rewards: but, as a great many others have done good by stealth and blush to find it fame, we are unhappily unable to complete our list:—

1. ROUNDELL PALMER, Counsel against TICHBORNE, made Lord Chancellor, with £10,000 a year.

2. CAIRNS, made an Earl as *his* price for having destroyed KENEALY: and backed up Three Judges in the House of Lords.

3. Lord FORGERY, Counsel against TICHBORNE, made a Judge. £7,000 a year.

4. HONEYMAN, Counsel against TICHBORNE, made a Judge. £5,000 a year.

5. ARCHIBALD, Counsel against TICHBORNE, who drew the Indictment and advised on the Prosecution, made a Judge. £5,000 a year.

6. HAWKINS, Counsel against TICHBORNE, made a Judge. £5,000 a year.

7. HUDDLESTON made a Judge, for having got KENEALY expelled from the Circuit. £5,000 a year.

8. MANISTY made a Judge, for having seconded the expulsion of KENEALY from Gray's Inn. £5,000 a year.

9. BRETT made Lord Justice, for imposing hardly any punishment on BAKER, and for praising the TICHBORNE Verdict, in his Trial of LUIE. £6,000 a year.

10. HOLKER made Attorney-General, for proposing the expulsion of KENEALY from Gray's Inn. £7,000 a year.

11. Mr Bowen, Counsel against Tichborne, made Law Adviser (£3,000 a year), which always leads to a Judgeship.
12. Chapman Barber, Counsel against Tichborne, a County Court Judge. £1,500 a year.
13. Mr. Purcell, Counsel and Witness against Tichborne, Attorney-General for Jamaica.
14. Captain Oates, £700 a year.
15. Chichester Fortescue, a Peerage.
16. Young Mellor, £1,500 a year.
17. Mina Jury, £500; promised £1,000.
18. Mrs. Pittendreigh, an unknown sum.
19. McAlister, £1,000.
20 & 21. Holt and Haden, unknown sums.
22. Hopwood, £350.
23. Mr. Staveley Hill, Q.C., who supported Dr. Kenealy's expulsion from the Oxford Circuit: Judge Advocate of the Fleet, £2,000 a year.
24. G. M. Dowdeswell, Q.C., who brought a string of charges against Dr. Kenealy on the Oxford Circuit, but did not use them, it being unnecessary: Referee of Court, £3,000 a year.
25. Moriarty, Barrister, leader of the fuglemen barristers who hissed, laughed, or cheered in Court during the Trial, £500 a year.
26. Mackarness, brother-in-law to Coleridge, made by Mr. Gladstone Bishop of Oxford with £5,000 a year.
27. Sir James Fitzjames Stephen, one of the Justices of her Majesty's High Court of Justice, salary £5,000 a year: writer of some fearful attacks on Tichborne and Kenealy, in the 'Pall Mall Gazette,' and other papers.
28. William Gibbes, the Wagga-Wagga Lawyer, £350.

These rewards, in mere money, represent *a capital sum of at least a million sterling;* so that we see, how true it is, that "Honesty is the best policy," even in this wicked world.

There are many other cases, we think, but we have no means of peering into the dark secrets of the Prison-House; but we hope they may come to light some day.

ARTHUR ORTON.

The following statements with reference to Arthur Orton will be interesting to our readers.

Sir,—I wish to make the following statement to you:—

I sailed from Woolwich on the 1st of December, 1852, in the ship 'St. Vincent,' and arrived in Hobart Town, Van Dieman's Land, now called Tasmania, on the 29th of April, 1853. I went to work for Captain Hamilton in the Brickfields, New Town. I knew Arthur Orton, who lived at the bottom of Elizabeth-road, and I have been in his company on several occasions. He lived with Jemmy Lads, the butcher. He was a man of about 5 feet 9 inches in height, pitted with small-pox, and marked with Indian ink, and I think he wore a diamond ring on his finger. He was a large-boned man. He said he came from Rateliffe Highway. He went away from Hobart Town to Geelong or Melbourne in 1855, and I never saw him afterwards.

I went to Sydney in 1857, and lived in the Hunter River district. In 1859 I came back from the Brisbane district, and travelled to Bathurst and Goldborne, and to a great many other places. I saw Professor Anderson at the Prince of Wales Theatre, in Pitt-street, Sydney. I also heard of Dr. Wheeler in Brisbane, but I never came across the Claimant in my travels; but I have seen him in England, and I can swear he is not Arthur Orton. I could pick Orton out of a thousand.

M. SULLIVAN.

Sir,—I was in Hobart Town from May, 1853, to August, 1857. During my residence there I became acquainted with Arthur Orton, who arrived in Hobart Town about the same time as myself. I was in the employ of Captain Hamilton, of New Town. Arthur Orton was employed during part of the time I knew him as a labourer in the bush. At another time I knew him as ostler in the employ of — Lord, Esq, of New Town, mail-coach proprietor. In July, 1855, I entered the service, as groom and coachman, of Dr. Brock, Chief Surgeon of the Colonial Government at Hobart Town. Whilst in his employ I lived at 16, Campbell-street, nearly opposite the Meat Market. During part of this time Arthur Orton was in the employ of Mr. Field, a gentleman of means, near Westbury, Launceston, as groom and ostler, or stockman. I can answer for it that he never kept a butcher's shop in Hobart Town, and it is impossible he could have had a shop, as stated by the Witnesses Mrs. Mina Jury and Mr. Hawkes, in the New Meat Market, without my knowledge, as I lived nearly opposite the market, and knew Orton so well, especially towards the end of 1854 and in the beginning of 1855. I remember that at the time Arthur Orton lived in the service of Jemmy Ladds, the butcher, in Elizabeth-street, Hobart Town. This was, to the best of my recollection and belief, in the early part of 1855. I also know that in July, 1855, Arthur Orton left Hobart Town and went either to Melbourne or Geelong in the 'City of Hobart' steam-ship.

I offered to give evidence in behalf of the Defendant in the late Trial, and my statement was taken down by his solicitors. And I say that there are many now living in Hobart Town who could state as positively as I can that the Claimant is not Arthur Orton. Instead of being such a person as the Claimant is, Arthur Orton was about 5 ft. 10½ in. or 5 ft. 11 in. in height, with straight legs and awkward feet, complexion fresh, hair light brown, eyes blue, and rather weak from sand-blight, marked with small-pox, and had large hands and large feet. He was a young fellow not particularly fond of work, and did not keep in one place long, nor to one kind of work long. Not a bit like the Claimant, whom I had an interview with at Poet's-corner.—I am, Sir, your obedient servant,

JAMES JOHNSON.

Working Men's Club, Upper St. Martin's-lane, May 15, 1874.

DECLARATION OF THE INSPECTOR OF POLICE FOR GIPPSLAND.

I, James Manton Flinn, of Tarraville, Gippsland, in the Colony of Victoria, do solemnly and sincerely declare that I was an Inspector of Police for the District of Gippsland, during the years 1850 to 1858. I have seen, at Mr. Shanklin's Dispensary, the Photographs of the late Claimant by Messrs. Maull & Co. of Piccadilly, London, which I instantly recognized as one Castro—well known in Sale, at the Royal Exchange Hotel, at Boisdale, and at the Dargo—where he was stationed by Mr. Foster. Upon my first meeting Castro, to whom I was introduced by my friend Mr. Dennis Connelly, who informed me that he was going by the name of Castro, and was the son of a Baronet, which information was afterwards confirmed by Castro himself, who told me that he was the eldest son of Sir James Tichborne, Baronet, that he was sowing his wild-oats, and had assumed the name of Castro, so as not to disgrace his family. I have met him since at Sale, at Boisdale, and at the Dargo, always known as Castro, never by the name of Orton. I bear testimony to this fact, that at Boisdale, where he was engaged as Storeman, Butcher, and Stock-driver, I have repeatedly heard Mrs. Foster (now Mrs. McAlister) in ordering him to get various stores, &c., address him by the name of Mr. Castro, never by the name of Arthur Orton.

In my capacity as Chief of the Police, I visited the Dargo, Crooked River, &c., and I made an appointment with Ballarat Harry, upon my return from the Crooked River, to accompany him down to Sale, the day that I arrived at the Dargo. Ballarat Harry left; I awaited twenty-four hours for his return, but not coming I proceeded on to Sale without him. I stayed at Castro's hut waiting for him, and I had long conversations with him; I was much struck with Castro's gentlemanlike bearing.

I was appointed a Chief of Police, for the District of Gippsland, by Sir Charles Fitzroy, Governor-General of New South Wales, and served under Charles La Trope, Esq., the then Superintendent for the Colony of Victoria.

And I make this solemn Declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria, rendering persons making a false Declaration punishable for wilful and corrupt Perjury.

(Signed) JAMES MANTON FLINN.

Declared before me, at Sale, in the Colony aforesaid, this 6th day of February, in the year of our Lord 1875.—

ROBT. WOPPING, Mayor of Sale.

STATUTORY DECLARATION OF WILLIAM DEAKIN.

I, William Deakin, of Sandhurst in the Colony of Victoria, Solicitor, do solemnly and sincerely declare that I have resided in the Castlemaine district of the said colony from the year one thousand eight hundred and fifty-six until lately; that I have seen a photograph purporting to be a likeness of the Claimant to the Tichborne Estates in England, and that I recognise the same as the likeness of a person who was brought up before the Castlemaine bench of magistrates in the year 1859, or thereabouts, in company with one Arthur Orton, on a charge of horse-stealing, and that the men were discharged on that occasion; that the Chairman of the bench was Captain Harrison, R.N., the police magistrate of the said district; that I am quite certain of the identity of the person whose photograph was shown to me as aforesaid; that I am personally acquainted with Arthur Orton, and that I have seen and conversed with him in the colony of Victoria within the last three years, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

WM. DEAKIN.

Declared at Melbourne, in the Colony of Victoria, this third day of December, one thousand eight hundred and seventy-two, before me, G. D. Langley, Justice of the Peace.

The following letter, signed "The Author of 'Queen Charlotte Island,'" appeared in the 'Morning Advertiser':—

A long and painful illness extending over two years, the result of trial and privations on the Rocky Mountains of British North America, has prevented my having a look at the Claimant or

taking any interest in the great Trial, and will be an apology for my troubling you with the following facts at this late date. The history of ARTHUR ORTON has been traced to 1861, and there has been no legal proof of his existence since. Now in 1862 I chartered the sloop 'Hamley' to convey my party and provisions from Victoria, in Vancouver Island, to the mouth of the Bellacoola River (entrance to the Cascade Mountains). One of the party was a "Cockney," who often cheered our evenings around the camp fire after the day's heavy march, with reminiscences of his adventures in South America and Australia. His avocations during life had been many—first as a butcher, then sailor, drover, gold-digger, cook, mate, charcoal-burner, and blacksmith. The last profession he was trying when he joined us. Owing to a huge bellows which he carried our progress from day to day over the mountains was much retarded, though it caused us much amusement and was a better protector against the savages than all our firearms combined; for when the Indians attempted to attack us the "blacksmith" would rush to the "infernal machine," and the Indians disappeared as if by magic. He had a remarkably good voice for a man knocking about the world, and one of the favourite songs was "Wapping Old Stairs," his native place. I find in my diary in the month of June that when we arrived at the foot of "the Great Slide," our party of eighty-six was reduced to less than half, and at this point we left the blacksmith to die by the hands of the Indians or by starvation, like most of my unfortunate companions, which was probably his fate; at all events, I never heard of him again, though I had been over the country two years later, and made every inquiry in hopes of hearing that some of the party had made their way back in safety to the Pacific coast. Now, in the early part of last summer I frequently saw a boy at Kilburn very like the blacksmith, and since this boy left here I have been informed, to my surprise, that he is Mrs. JURY's son. These facts make me think that ARTHUR ORTON, my old fellow-traveller, who I thought had perished in the *Cascades*, must be the now famous ARTHUR ORTON.

SIR,—The following, whether important or not, must be my apology for addressing you.

PETER GIBBS, of this town, shipowner, informs me that Captain NEWTON left Hobart Town, Australia, the same month the Claimant arrived in England; and that Captain NEWTON then left ARTHUR ORTON, with whom he was most intimately acquainted, lodging at the Salutation Inn, Hobart Town. Captain NEWTON has recently arrived in London from Bull River, in the barque 'John Peel,' and is now lying in the Millwall Dock. You can easily get Captain NEWTON, and test his knowledge, if you think it necessary.—I remain, yours respectfully,

H. B. BUCKINGHAM.

58, Mount Stuart-square, Cardiff, December 19, 1873.

STATEMENT OF MRS. FANNY ANNETTE HAMPTON.

I, FANNY ANNETTE HAMPTON, of Boa Vista, Torquay, in the county of Devon, widow, do solemnly and sincerely declare,—

That I am the widow of GEORGE ESSEX HAMPTON, who died on the 3rd day of January last. He was Acting Comptroller-General of Convicts, under his father, Governor HAMPTON, of Western Australia, in the year 1867, and for a year or more previously. Mr. HENRY WAKEFORD succeeded him about the year 1867. We left Swan River with Governor HAMPTON to come to England on the 2nd of November, 1868, having been married in the month of June previously. Governor HAMPTON is now dead. About three weeks before his death my late husband was reading the 'Times' newspaper, and suddenly exclaimed, "What a strange thing! That man who was under groom in our stables (meaning at Government House) told me his real name was ARTHUR ORTON." My late husband then wrote the name ARTHUR ORTON, and his convict number, on a small piece of paper, and that Mr. HENRY WAKEFORD was the present Comptroller-General of Convicts, which paper he put on the mantel-piece of the bedroom in which we were sitting. I read it myself. I asked him why he did not write to the 'Times' about it, and he said he would if he were in better health. And my husband said that man was convicted for something connected with horses, but I cannot remember what. He then had spitting of blood, and got gradually worse till he died.

I am quite sure he would not have written down ARTHUR ORTON'S name and his convict number, if he had not a clear recollection about the number. As my husband got so much worse, nothing more was thought about the piece of paper until after his death, when the circumstance was mentioned to my uncle. I and my servants have since made the most careful search for it, but it cannot be found, and I can only suppose it was inadvertently burnt with some other loose papers. I cannot say, from what passed between me and my late husband, whether ARTHUR ORTON was at Government House, as under groom, at the time we left Australia, and that he might be traced as having been under groom, though he would probably not mention his real name to any one who was not kind to him, or did not take the interest in him my husband did. He was never called ARTHUR ORTON but went by some other name. The principal groom's name was TIM DONOVAN, an emigrant, and he was left with Governor WELD, and had been with Governor HAMPTON three or four years. I know he was photographed as holding the horses, and one of Governor HAMPTON'S servants.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King WILLIAM the Fourth, entitled an Act to repeal an Act of the present session of Parliament, entitled an Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof and for the more entire suppression of oaths and affidavits and to make other provisions for the abolition of unnecessary oaths.

(Signed) FANNY ANNETTE HAMPTON.

THE PRINCESS ALICE OF ENGLAND.

The PRINCESS ALICE of England having died Dec. 14, 1878, on the seventeenth anniversary of her father's death, the following appeared in THE ENGLISHMAN of December 21:—

I earnestly and respectfully desire the following to be read aloud to the household for the next six Sundays, by all who buy THE ENGLISHMAN.

Let the Husband meditate upon it, well and thoughtfully, with the Wife of his love: and let the Mother religiously explain and expatiate upon it to her young children.

Let all unite in solemn Prayer to GOD, that Her Majesty the QUEEN may no longer be deaf to the Voice of Right; and that she may intercede with her Chief Minister to release a Man who is the Victim of Fraud, Forgery, Perjury and Corruption.

Five years have nearly passed since this Crime, unparalleled in modern times, has been openly committed in the face of all England; and still redress appears as far removed as ever.

I ask no Man to join in my prayer on the ground that he is ROGER TICHBORNE. I, myself, with millions believe it; but there are many also who do not.

But I ask every true Man and Woman to join on the ground where all agree—namely, that the Man had not a Fair Trial, and is consequently the victim of an unjust condemnation.

All who have read THE ENGLISHMAN and the TRIAL, and the *facts* which they record, know that the Judges had made up their minds beforehand that he was an Impostor who ought to be convicted.

All who have read the Pamphlet, entitled "The Tichborne Jurors," are satisfied that he did not receive justice at the hands of those persons.

It never before was known in England that where a conviction had been procured by Witnesses who were felons, and documents that were forged, the victim was not forthwith released.

Yet all these things, and more, have happened in the TICHBORNE Case.

It never yet occurred that, where a Man was really guilty, fresh proof of his guilt did not turn up after his conviction. But in this case, almost every month since the Man was condemned fresh proof of his identity and innocence has appeared.

I am informed, and I believe it to be true, that every Warder who has had him in custody, since the first day that he was sent to Newgate until now, is satisfied that whoever he may be he cannot be ARTHUR ORTON; and I respectfully invite the QUEEN and Lord BEACONSFIELD to inquire into this matter for themselves.

If he is not ARTHUR ORTON it follows as a necessary consequence that he must be TICHBORNE; for it is not pretended after years of inquiry that there was any third man.

There are some who think he is a natural son of Sir JAMES TICHBORNE. This is too absurd for refutation. Lady TICHBORNE, the Mother, would never have helped the bastard of a husband whom she did not much love to oust her son ALFRED whom she most fondly loved.

The Chief Justice at the Trial owned that all attempts to prove "a craze" as against the Mother had signally failed. If then she was in full possession of her mental faculties, who, in his senses, can doubt her recognition?

I am as satisfied as I can be of anything, from innumerable little incidents that took place between myself and him during the eleven months that I was in communication with him, that he is most assuredly not ARTHUR ORTON; and that he is, to the best of my belief and judgment, the undoubted ROGER TICHBORNE.

E. V. K.

THE PRINCESS ALICE.

THE death of this Noble Lady fills us with the deepest sorrow. Had it been one of our own household, we should scarcely have felt more truly grieved.

In all respects she was to be loved and venerated with almost

religious devotion. Her path in life was like the course of a Star, all Light and Beauty.

Deep and true is our sympathy for her husband. He was Prince ALBERT'S own choice, and the wisdom of his selection has been well proved.

Equally profound is our sorrow for her children; left most of them at an early age without the loving care and guidance of that fond and tender Mother.

We grieve no less for this sad bereavement in our own QUEEN'S household. The soft and brilliant Rainbow has faded away into the night of Death. She, who was as Music out of Heaven, is no more.

O QUEEN! we are indeed bowed down. We feel your grief as if it were our own. But it comes from GOD, and it must be borne patiently. HE sends no affliction but for wise, and just, and hallowing purposes.

Would that the whole Empire could see in this a further mark of GOD'S displeasure with us as a People.

We are covered with the darkness of one of the most grievous Sins ever committed by any Nation. The whole People have, by their Rulers, their Legislators, their Judges and their Bishops, taken upon themselves the heavy burden of that Sin.

They have defied God, whose Law is Justice. They have offended Heaven, whose essence is Truth. They have crushed an innocent Man, and sent his Children into ruin, at the bidding of Might, in scorn of the Right.

Oh! how dreadful is the TICHBORNE Crime! And the wailings of the innocent children rise up to Heaven; and Justice descends from the Throne clothed in snowy robes, but with the fiery sword of GOD'S Vengeance upon Guilt.

The fair and innocent Princess has passed away, but not on her was the flame of GOD. She has gone into a Paradise of Light, and Love, and Beauty; and with the starry-crowned Children of Heaven wears a robe of everlasting splendour.

And the wailings of the helpless children ascend to Heaven. Their innocent cries and prayers pass not unheeded by the LORD GOD, who is the All-Father.

But woe—woe—unto the hard of heart, who are not waked from their dreams of luxury and lethargy by this manifest act of GOD. Woe unto the accomplices in the TICHBORNE Horror.

For the weepings of the little children arise upon the clouds of Heaven; in tears, in blood they move before the Thrones; and GOD hearkeneth to the cry of the children.

For this most terrible and bloody deed, committed in the name, but in mockery of Law, the just and righteous Vengeance of the LORD, has fallen upon, and will continue to afflict this Kingdom, until the full measure of atonement has been made.

It will not spare the High; nor will it withhold its hand from the lowly. For high and low are equally the same in the eyes of the LORD GOD.

In plague, in pestilence, in famine and in death, we have already felt the just anger of the Almighty. As He visited the Nations of old in the terribleness of His wrath, so is He now visiting a guilty People.

In thunder from Heaven, we hear Him loud proclaim:

"I, the LORD thy GOD, am a jealous GOD; visiting the iniquity of the fathers upon the children, unto the third and fourth generation of them that hate me" (Exod. xx. 5).

"To me belongeth Vengeance and recompense. Their foot shall slide in due time; for the day of their calamity is at hand; and the things that shall come upon them make haste" (Deut. xxxii. 35).

"If I whet my glittering sword, and my hand take hold on judgment, I will render Vengeance to mine enemies, and will reward them that hate me" (Deut. xxxii. 41).

O GOD! we cannot ask Thee to avert this blow; for by our sin we have called down the chastisements that Thy Hand of Might lays upon us.

We have offended Thee most grievously. Yet still we harden our hearts, and we repent not, though we see thine arrows falling around us as the lightnings; smiting our strong men, sparing not the women nor the children, for all are guilty because they have assented to the deed.

Vengeance is thine, O GOD, and all Thy Vengeance do we well deserve.

Gone is the Beautiful from the home that she made beautiful; but the blood-stained remain. They wear coronets of gold; and are clothed in purple. The QUEEN herself adorns them with her own hand; she attires them in scarlet and in jewels, when they are reeking with the blood of the innocents.

And does not GOD come? and will He not avenge? Yea verily—or He were no GOD.

In the last gleam of consciousness, before she passed into dim oblivion, she saw the Prisoner in his dungeon. The songs of his children were in his ear; and their smiles were imaged on his heart; and she thought of her own little ones:—and the strong man lay down and wept. And the Beautiful One wept and sorrowed with him. And then—she passed to Heaven.

O QUEEN! O QUEEN! O sorely stricken QUEEN! awake, arise, ere it be too late; awake and listen to the Voice of Truth. Release the innocent from chains. Pay heed no longer to the sons of sinfulness; to the adulterous generation that is close by. Thou seest thy People perishing before thee—on land, on sea, they die and are consumed. O QUEEN wilt thou not have pity on the multitude? Wilt thou not compassionate the thousands who are without bread?

"Thus saith the Lord. Behold I will plead thy cause: and take Vengeance for thee. And I will dry up her sea, and make her springs dry." Jer. li. 36.

See we not this Propheey fulfilled before us, as day rolls into day? Can we cast our eyes on Land or Water, and not behold the Angel of GOD, reaping for us the guilt that we have wickedly sown?

O Father! may we subdue our stubborn and wicked pride, so that we may fall down before Thee, in true penitence of heart, and make due amends for the crimes that we have committed.

Inspire and soften us with love, and with the sacred spirit of equity, so that we may arise, all of us, even as one man, and put away this dread sin from our doors; that we may worship Thee, without this grievous load upon our souls and consciences.

Say unto our Rulers, Knock off the chains of the oppressed; throw open the prison-doors; let the innocent, who is heart-sore and in bondage, walk forth into light and liberty; so may his presence be as sunshine to his now desolate home, and bring happiness to the dark of heart.

Thus shall we rejoice and be glad in the loveliness of that good deed; and behold the Clouds vanish, and peace and happiness and heavenly calm shall clothe us in the beauty of holiness. Amen.

The Curse of God.

The Curse of GOD sweeps o'er the land:
Lord! Lord! have mercy!
We die—and feel no helping hand;
Oh! Lord have mercy!
Famine and horror, plague and blight,
Oh! Lord have mercy!
Enwrap us, as in triple night;
Lord! Lord! have mercy!
The great are throned on seats of Gold;
Lord! Lord! have mercy!
The starving Poor are bought and sold;
Oh! Lord have mercy!
The swollen Rich oppress and slay;
Oh! Lord have mercy!
While Millions curse the light of Day;
Lord! Lord! have mercy!
The Mothers weep in want and woe;
Lord! Lord! have mercy!
The new-born Babe brings joy no moe;
Oh! Lord have mercy!
Disease, Starvation, Crime, and Fraud,
Oh! Lord have mercy!
Bear on their wings Thy Curse, O GOD!
Lord! Lord! have mercy!

ONE HUNDRED AND FIFTY-NINTH DAY——THURSDAY, JANUARY 15TH, 1874.

MR. HAWKINS' REPLY ON BEHALF OF THE CROWN.

The Trial at Bar of the TICHBORNE Claimant was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH. The front seat, which is reserved for the use of Queen's Counsel, and which of late has rarely had more than two or three occupants, was filled, and the attendance of the Bar generally was unusually great. Dr. KENEALY, however, was not present.*

Mr. HAWKINS, Q.C., began his reply on behalf of the Crown.† He said—Gentlemen of the Jury,—I rejoice, and I dare say you share in the satisfaction I feel, that at length the hour has arrived when it becomes my duty to render you such assistance as is within my power in the consideration of the verdict which you will shortly be required to pronounce on this all important issue, and to point out to you as clearly as I can the grounds upon which, having heard all that has been urged on the part of the Defendant, you should come to a decision adverse to him. Three-quarters of a year ago, when I addressed you in opening the Case which I had the honour on the part of the Crown to lay before you—momentous as I then felt that the questions were upon which you would be called upon to pass your judgment—I little contemplated that, in the course of this inquiry, those questions would have been so widely extended, and would have assumed the enormous gravity which they now possess. I thought that we were simply about to investigate a question involving the guilt or the innocence of the Defendant of the crime of perjury; but as the Case has gone on, the accused has turned accuser, and has attacked the character, honour, the truth, and the honesty of so many whose lives have hitherto been passed without reproach, that were it not for my unbounded confidence in you I should feel appalled at the magnitude of the interests which rest upon your verdict. Through his Counsel, and in order to extricate himself from the perils by which he is encompassed, the Defendant has not hesitated to charge the Government of this country and the responsible officers of the Crown with a scandalous and shameless abuse of the power and influence they possess; and with wantonly and wickedly lending their aid and the public purse to a Prosecution which, upon his own daring assertion alone, he has denounced as one instituted to serve the ends of a private family, and to rob him of his inheritance.‡ He states that they have done this in defiance of the interests of justice, and for the purpose of crushing by condemnation one whom they knew to be innocent of the crime imputed to him. He has not hesitated unblushingly to charge them with wholesale bribery, forgery, and conspiracy, induced by the grossest and most corrupt influences. His sweeping and baseless charge has accused as perjurers and conspirators honourable men and women, venerable and reverend gentlemen, who can have no other protection against these foul aspersions except such protection as your verdict can afford them.§ You were solemnly told by the Defendant's Counsel in tones and language which must have struck you with amazement that if you desired your verdict to meet with the approval of your fellow countrymen, and your memory to be held in respect when this great Trial should have become matter of history—you had no alternative but to accord to his Client a triumphant acquittal, and in so doing mark your abhorrence and detestation of this Prosecution, which, in studied language, he stigmatised as wicked and profligate. These are terrible charges to make; and, if true, they would indeed be diabolical crimes, compared with which those which are now charged against the Defendant would be trivial. But, Gentlemen, I will not do you the monstrous injustice of supposing that you have given ear to those wild, reckless, unfounded, and slanderous denunciations which the Defendant, through his Counsel, has hurled against all—with few exceptions—whose duty has compelled them to take a part in this inquiry. Nor will I insult you by supposing you are of opinion that this Trial was directed by the late lamented Lord Chief Justice of the Common Pleas, before whom the memorable action of ejection was tried, or that it has been promoted by the Crown, for any but the one object of ascertaining, by your impartial, unbiassed, and uninfluenced Verdict, whether, in the evidence given by the Defendant in support of his claim to the TICHBORNE baronetcy and estate, he wilfully foreswore himself, and whether, if perjury was committed by him, he should not be visited by the punishment which the law of this country has awarded to that crime, with a view to preserve inviolate the sanctity of an oath, without which law would be powerless to confer security upon the lives and liberties of the subjects of this realm, and to protect their rights and properties against wicked, lawless, and fraudulent invasion. Gentlemen, in the spirit in which this Prosecution has been instituted, I pray you that, whatever you may think of the course which the Defendant through his Counsel has thought fit to adopt, it may not prejudice your minds or recoil upon him to his disadvantage when you come to consider your Verdict. Let your Verdict be, as I know it will be, one forced from you, and from your honest convictions, by the evidence which you have before you, and by your own intelligent convictions. I now proceed to call your attention to the question which you will have to determine.

It is now nearly twenty years ago since the TICHBORNE family was filled with grief by the melancholy tidings that ROGER TICHBORNE had met with a sad and sudden death at sea. At the same time, and by the same catastrophe, eleven humbler homes had to mourn the loss of some father, husband, brother, or son; for the 'Bella' had gone down, and all her crew were believed to have perished. For more than eleven long years, notwithstanding every inquiry that could be made, no trace of any survivor of the wreck could be obtained; but in 1863, after the death of her husband, Lady TICHBORNE, the mother of the young man, commenced advertising for her son, offering large rewards for his discovery. Whether these advertisements, and her refusal to believe in her son's death, led some adventurer to a determination to turn it to account is matter for your consideration; but certain it is, that in the autumn of 1865 the Defendant, who was then carrying on business as a butcher at Wagga-Wagga, under the assumed name of THOMAS CASTRO, was boldly put forward as the son of Lady TICHBORNE. At that time, I should tell you, the family mansion was leased to Colonel LUSHINGTON by the trustees of the infant son of Sir ALFRED TICHBORNE. Of course the connections of Sir ROGER were greatly startled. They had corresponded with ROGER TICHBORNE up to the moment of his embarkation on board the 'Bella'; and, considering his silence since that time, as well as the other circumstances of the Case, they were disposed to receive the Claimant with the gravest suspicion and distrust. Far and wide they caused inquiries to be made in order to discover who he really was, and at last they discovered a clue which enabled them to trace his history, the result being that he was no other than ARTHUR ORTON, the son of a respectable butcher at Wapping, who since 1854 had never been heard of by any member of his family. Now, if the Claimant was really the man he had alleged himself to be he would be entitled to eject Colonel LUSHINGTON, and the Court of Chancery therefore directed an action of the nature to be brought with a view to try the truth or falsehood of the claim. In the course of the trial the Defendant deliberately made three statements on oath—statements which under no circumstances could have been the result of error or mistake, and to which I desire to call your attention, for they form the main questions which you will have to consider. He swore, first, that he was ROGER CHARLES TICHBORNE, and had been saved from the wreck of the 'Bella.' In the second place he swore that, in July or August, in 1854, in a mill at Tichborne, he had effected the seduction of his cousin, KATE DOUGHTY.

The LORD CHIEF JUSTICE: Not in the mill, at the mill—it will be for the Jury to decide whether by "at" he meant "in."

Mr. HAWKINS: Yes, my lord; but I do not suppose that any one, looking at the statement of the Defendant, would conclude that when he said "at the mill" he meant "in the grotto." Lastly, he swore that he was not ARTHUR ORTON. Now, it seems to me that it will be most convenient to deal with the last of these questions first, because if you should come to the conclusion that I have shown him to be ARTHUR ORTON that would conclusively dispose of every other assignment of perjury in the indictment, because if he is ARTHUR ORTON he cannot be ROGER TICHBORNE, neither can any of his statements be true. Now, whether or not he is ARTHUR ORTON, you will have little difficulty in determining for yourselves, if you look at the facts as they occurred in their sequence. ARTHUR ORTON was the son of GEORGE and MARY ORTON, of 69, High-street, Wapping. He was born on the 20th of March, 1834. He was the youngest son of a large family of sons and daughters. His earliest life has been spoken to by so many Witnesses, his father's friends and acquaintances, that the High-street seems to be perfectly familiar to us all. He was

* Dr. KENEALY was exhausted, worn out, and nearly dead after his exertions. He was unable to be present.

† The whole of this reply had been written out, and was read by the learned Counsel in Court from a copy before him.

‡ For some proof that Dr. KENEALY's charge against the Prosecution was correct, see Lord RIVERS' letter in the *Introduction*, page 100, in which the statement is made by his lordship that Mr. HAWKINS had, through a mutual friend, attempted to induce Lord RIVERS to cease in his endeavours to procure the Claimant's release from Newgate Prison, when he was attempting to procure bail. This was part of the "Justice" which the representatives of the Prosecution dealt out to the Defendant!

§ The reader should not forget to note that, in the Common Pleas, although Sir JOHN COLERIDGE, whom Mr. HAWKINS now represented in the Queen's Bench, used much stronger language than Dr. KENEALY, and charged numbers of respectable Hampshire ladies and gentlemen in having knowingly conspired with the Defendant in cheating the TICHBORNE family out of their rights, Chief Justice BOVILL never objected to, or interrupted the Attorney-General in his long-winded harangue (see extracts from his Speech, ante pages 352-356). How different it was with Lord Chief Justice COCKBURN and Dr. KENEALY!

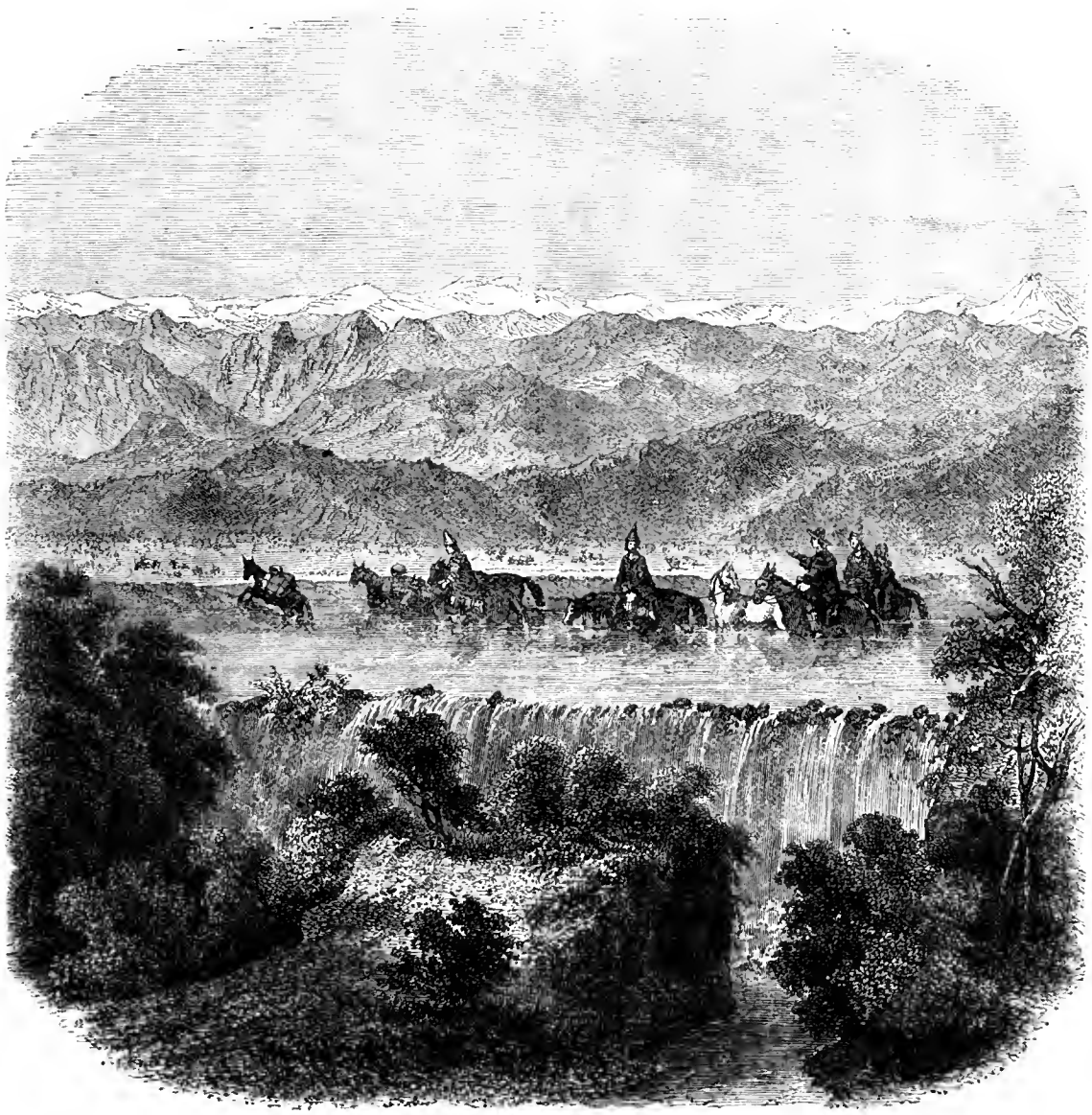
taught very little, and he acquired no language but Wapping. He lived at home, and rendered some little assistance—probably very little—in his father's shop, and spent his time in running about the streets with other lads of his own age. In 1844, when he would have been ten years of age, there was a great fire opposite his father's house, and about that time he was afflicted with a nervous malady called St. Vitus's dance, which was probably caused by the fright. Dr. JAMES BROWN, now of Nelson-square, Blackfriars, attended him, and frequently saw him down to 1852. He says that he has a very lively recollection of faces, and having looked at the Defendant he says he is the man whom he had seen as late as 1852. Dr. BROWN recommended a sea voyage for ARTHUR'S malady. Now, old Mr. ORTON had amongst his friends two who resided at Bridport. One of them was Mr. ANGELL, the owner of the 'Busy,' which traded between Bridport and Wapping. The other was JOHN JARVIS, a master mariner, who kept the 'Bridport Arms.' ROBERT ANGELL and his son, HENRY ROBERT, who was master of the 'Collingwood,' and Mr. JARVIS'S son JOHN, when they came to Wapping, made old ORTON'S house their home. He supplied their ship with stores, and they lodged with him. Thus they became intimately acquainted with ARTHUR ORTON. Mr. HENRY ROBERT ANGELL has been examined, and he says he had known ARTHUR ORTON from the time he was three years old. In 1845 he was taken by his mother to Bridport, and stayed there five weeks. Mr. JARVIS told us that while he was on this trip there was a person named HALLETT, who resided in West-street, Bridport, and who became acquainted with the ORTONS during this trip. As ARTHUR was found to have experienced great benefit from it, his parents were advised to send him to sea, and in April, 1848, when he was 14 years old, he was apprenticed to GEORGE BROOKS, the owner of the 'Ocean.' On April 29 he joined the 'Ocean,' which went to Antwerp, where she took in cargo, and proceeded to Valparaiso. Captain BROOKS and his widow, now Mrs. HOWELL, who has been called before you, saw him every day for a month when she went on board the vessel where she saw ARTHUR ORTON performing his duties as an apprentice. Mrs. HOWELL has been called to give her recollection of ARTHUR ORTON, and while she declined to swear positively after such a lapse of time, she told you that as far as she could form a judgment, this is ARTHUR ORTON. The vessel arrived at Valparaiso at the end of 1848, and she remained there, or in the neighbourhood, till June 25, 1849, when ARTHUR ORTON deserted. The British Consul reported him as a deserter, and his register ticket was delivered up. In little more than a year and a-half after this—on the 18th of February, 1851—we find him passing by the name of JOSEPH M. ORTON, 16 years of age, and he again shipped at Valparaiso as an ordinary seaman, on the 'Jessie Miller,' bound for the port of London, his home. Where and how had ARTHUR ORTON passed these 19 months? For an answer to this question I refer you to the evidence of Dona CLARA HAYLEY, who was examined before you; and notwithstanding the tone in which she was spoken of by the Defendant's Counsel —you have had an opportunity of observing her—she is a lady of character and position in the place in which she lives. She is the wife of an English doctor living in Melipilla, a little town which is about 40 miles from Valparaiso, and which has, even now, not more than 2,000 inhabitants. She told us that at the period of which we are now speaking her house was the only one in the place where English was spoken, and that it was a hospitable house, she and her husband being ready to afford an asylum to any one who sought it. Without professing to fix any exact date, she says that some time after her marriage (which took place in 1847), a young English lad, dressed as a sailor, made his way to her house and found shelter there.* He said his name was ARTHUR ORTON, spoke of his father as GEORGE ORTON, who he said was butcher to the Queen, and mentioned the names of his sisters—MARY ANN, MARGARET ANN, MATILDA ANN, and ISABEL. He accounted for his presence at Melipilla by saying that his father thought him ill and had sent him to sea, and that the captain of the ship having behaved badly to him, he had run away. In person, she says, he was large and fat, his hair was light, he had a moist and ponting lip, and the cast of his nose, she says, "I very well remember." Upon one of his arms she says, "there was a blue mark, and within it there were two letters." Upon one occasion, she says, "I asked him what the letters meant, and he said they were the initials of his own name, ARTHUR ORTON." At first he conversed in English only, but in the course of a little time he acquired a little Spanish. He remained an inmate of the house for three months with the Doctor, speaking broken Spanish, diverting himself as best he could, and rapidly made the acquaintance of all the inhabitants of the little town, many of whom took a special interest in him. They treated him with great kindness, and permitted him to do pretty much as he liked in the way of amusement. On leaving Dona HAYLEY he went to live in the house of Don TOMAS CASTRO and his wife, Dona NATALIA SARMIENTO. Forgive me mentioning these names now, but I do so because it will prevent my doing so hereafter. He went to reside with Don TOMAS CASTRO and his wife, whom he addressed as Mrs. CASTRO, a title by which, perhaps, she was never addressed before. He visited Don PEDRO PABLO TORO, Don HURTADO, Don RAMON ALCALDA, and Dona FRANCISCA AHUMADA, an old lady, who knew him very well, and had a lock of his hair, a portion of which has been produced before you. These names it will be well for you to bear in mind, because they will be of importance when I come to deal with the CASTRO correspondence. With these people ARTHUR ORTON resided for a year and a half, beloved by everybody there; but at last he seemed to get tired of the place, and determined to leave it. A subscription was got up for him, and he took his departure, carrying with him the goodwill and the good wishes of all his acquaintances. For years his Melipilla friends preserved an affectionate recollection of him, and there was not one who entertained a sentiment of hostility. It was with kindly feelings that Dona HAYLEY stepped into the box, and, upon her oath, looking at the Defendant, said he was the lad whom she had befriended. If Dona HAYLEY speaks the truth—and I cannot see a shadow of reason to doubt it *—the period which elapsed between the arrival of ARTHUR ORTON and his embarking on board the 'Jessie Miller' is amply accounted for. You cannot suppose her story to be an invention, nor can you suppose that she has come here to tell you that which she knows to be untrue. At all events, if he was not ARTHUR ORTON, one would naturally ask, Where was he? On the 11th of June, 1851, the 'Jessie Miller,' arrived in the port of London, and immediately afterwards ARTHUR ORTON appeared in the east of London. He was smarter, and much benefited in health. He renewed his acquaintance to a limited extent with his old associates—with WALTER LEAVER, who weighed him, and found him over thirteen stone, with the CRONINS, and with HENRY ANGELL, who says that he used to see him mischievously throw the lasso in the streets to catch the dogs. He assisted his father in the business, and used to drive the ponies which his father imported from Dundee, and which were landed at Downs' Wharf. With the little Spanish he had picked up he tried to get engagements as interpreter to ships' captains coming into the port of London. He paid his addresses to Miss ANNA JOHNSON, who declined them, and subsequently to Miss MARY ANN LODER, the daughter of the master of a steam-tug, and who lived at Russell's-buildings, within two minutes' walk of old ORTON'S shop. Of all the persons who have been examined before us, there was none who was so familiarly acquainted with his face, voice, and features as MARY ANN LODER. His other acquaintances' knowledge of him seems to be of a more general character, from casually meeting him, passing the time of day, and so on; but MARY ANN LODER was constantly associated with him during the year that he lived again at Wapping. It is said that I have offered no proof that ARTHUR ORTON and MARY ANN LODER were ever seen together. Well, I don't know what better evidence I could offer you than her own deposition of the fact. Certainly, no denial of the truth of that part of her story was challenged in cross-examination; and it seems to me that if I had called corroborative evidence on that point I should have been guilty of a waste of your time. MARY ANN LODER was well acquainted with the sisters of ARTHUR ORTON, but her intimate acquaintance with him commenced on Christmas Day, 1851, and she gives us the following account of it. She says that on that day she first knew that ARTHUR ORTON had a regard for her. He used to see her home from his sister's, and they used to walk out together in company. From that time she says "scarcely a day passed without our meeting;" and for one whole year they seemed to have been almost constantly together. He told her of his having deserted from the ship, his having stayed a considerable time in South America, and other matters, and he seems to have been very sincerely attached to her down to the close of 1852. About that time he told her that there were too many of them in his father's business, that he contemplated going abroad in order to try and improve his position. In 1852, having made up his mind to leave England, he endeavoured to induce her to accompany him to Hobart Town and to share his fortunes, but it would appear that he did not succeed. He procured the cancelling of his old indentures and applied for a new register ticket, in which he is described as "A butcher, 5ft. 9½in. in height, fair complexion, with no marks upon his person." By that, of course, is meant no visible marks, such as small-pox or otherwise. With that ticket on the 23rd November, 1852, he signed ship's articles and shipped himself as a butcher on board the 'Middleton,' bound for Hobart Town. Of that vessel Captain STOREY was the master, JOHN LEWIS the first mate, JAMES PEEBLES the boatswain, HENRY ALLEN the cook, and OWEN DAVID LEWIS an ordinary seaman. I pray you to bear those names very steadily in mind. He took charge of some Shetland ponies, and on the 29th of November left England with the shipmates I have mentioned. HENRY ALLEN, who is now in the service of Messrs. PENN, the eminent engineers, and against whom not a single syllable can be said, told us that the voyage was long and tedious. They were detained till New Year's Day in the Channel, and it was

* Dona HAYLEY swore that the only Englishman that ever appeared at Melipilla arrived there six years after her marriage with Mr. HAYLEY (an Englishman), and she was married in 1847. This would bring the visit of the Englishman to 1853, *the very year that the Prosecution proved Arthur Orton to have been safe and sound in Australia*, and the very year that Mr. ROGER TICHBORNE was seen by MOORE, his valet, *riding towards Melipilla*, then only forty miles distant.

* This "lady," who received £200, and was promised a further sum for "exponses," of course "could have no reason for speaking anything but the truth"!

five months before they reached Hobart Town. He says he remembers ARTHUR ORTON well; that although he shipped as butcher he acted while they were in Torbay as steward, but that he afterwards resumed his old position. During the voyage he saw him many times every day; he slept in the same compartment of the ship, and in the third berth from him. He says that he was stout as a youth, and promised to grow into a much stouter man. He noticed a twitch in his eye, and he, looking at the Defendant, declares that he is the ARTHUR ORTON with whom he sailed. The 'Middleton' arrived at Hobart Town in May, 1853. THOMAS PENROSE HAWKES was there at the time, and was orderly to Sir WILLIAM DENISON, the Governor. It was his duty to observe the arrival of vessels, for they often brought out convicts; and he remembers the 'Middleton' and the ponies, and ARTHUR ORTON, in whose care they were. He tells us that ORTON began business as a butcher in the New Market, and that he saw the name ORTON over the door. He saw him there for eighteen months, about the place and in his shop constantly. He was produced before you, and he swore positively that Defendant is the same person. But there is another person who saw him at Hobart Town, and that is Captain ROBERT HENRY ANGELL. He was there in the month of September, 1853, with his ship, and he is corroborated by ARTHUR ORTON himself, for in a letter to MARY ANN LODER he

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 58.—WATERFALL OF THE FLAT ROCK, SOUTH AMERICA.

expresses disappointment at receiving no tidings from home by Captain ANGELL. This Witness knew him when he was three years old, watched his boyhood and his youth on the frequent visits he paid to old ORTON, and saw him grow up, and has no doubt that the man who sits there is the same. There was another person who gave evidence which is of much greater importance, Mrs. MINA JURY. She was the wife, and is now the widow, of Captain GEORGE JURY, whose brother FRANCIS married ARTHUR ORTON'S sister. Mrs. FRANCIS JURY gave him letters of introduction to her brother, and ARTHUR ORTON delivered that letter to Mrs. MINA JURY. She had ample opportunities of knowing ARTHUR ORTON, for, on his arrival, he called on her, and presented his letter. From that day she continued to see him during the whole of 1854. She describes him as following the occupation of a stock-driver, and afterwards a butcher. She perfectly remembers his arrival, his slaughtering and driving cattle, and his taking a stall in the market. In the course of conversation he told her he had been to South America, but had got sick of it, and had returned to his father. He spoke to her more particularly about his sister MARY ANN, who became Mrs. TREDGETT. I think he said he had a letter from her, in which she desired him to come back and not travel about any more. There may not be much in that, but it seems to me there is some significance in that little bit of evidence, and you may think so when you come to the evidence of Mrs. FAIRHEAD, who says that he always liked MARY ANN best of his sisters. Mrs.

HAYLEY says that she saw on his arms two initials in blue, "A.O." Is that an invention? In May, 1855, for the purpose of going into his stall, ARTHUR ORTON borrowed of Mrs. MINA JURY £14 for which he gave her a promissory note, dated the 22nd of May, payable three months after date. The body of the note is not in the handwriting of ARTHUR ORTON, but the signature is. Now that note became due on the 25th of August, 1855, and Mrs. JURY says on the morning it became due she and her husband called at ARTHUR ORTON'S lodgings in Hobart Town to present it. On that morning ARTHUR ORTON had quitted the place. On further inquiry they found that he had gone from Hobart Town to Port Albert in a vessel belonging to Mr. JOHNSON, which was used by that gentleman for conveying sheep and cattle to and from Gippsland, and from that time MINA JURY says she never saw him until the day she saw him sitting in Court; and I think, as far as we know, the last communication made by ARTHUR ORTON to his friends was from Hobart Town in 1854. Just let us for one moment stop here to see how far we have traced ARTHUR ORTON. His arrival in Hobart Town is beyond all question, and I think the date is too. That he remained till 1855, and left in the month of August, seems to be beyond all doubt. He quits Hobart Town in a vessel belonging to Mr. JOHNSON of Newburn Park. You will find, when I come to deal with Mr. HOPWOOD'S * evidence that ORTON told him he had been engaged by Mr. JOHNSON at Hobart Town.

The LORD CHIEF JUSTICE: Is JOHNSON at Hobart Town identified with the JOHNSON of Newburn Park?

Mr. HAWKINS: I think he is, my lord. I am not sure whether it is positively stated.

Mr. HAWKINS then read certain evidence to show that they were one and the same person, and continued:

However, we now have ARTHUR ORTON on board one of Mr. JOHNSON'S vessels, bound to Port Albert. If you will refer to the map of Australia you will see the relative positions of Hobart Town and Port Albert, and you will see that the latter would be the direct route for people going to Newburn-park or Gippsland. JOHNSON, besides being the owner of vessels, is also the owner of a large cattle station, about 50 miles from Port Albert. In 1855 —the year is fixed by HOPWOOD, who is now a farmer and landowner in Australia, and whose father appears to have been a person of considerable respectability as butcher at Stockport in Cheshire—he (HOPWOOD) entered into the service of Mr. JOHNSON, and found there ARTHUR ORTON, and with him he continued for a period of certainly upwards of a year. He said a year and nine months, but that must have been a mistake.* There can be no question that he found ARTHUR ORTON there, and remained in the same service for a great many months, probably upwards of a year. He remained till ARTHUR ORTON left to go into the service of Mr. FOSTER at Boisdale. What opportunity had HOPWOOD of seeing ORTON at that time? They lived together in one hut, sleeping in bunks one above the other, and fed in the same building for upwards of a year. ARTHUR ORTON told him that, in first of all coming to Australia, he had landed at Hobart Town, and in Hobart Town had been engaged by Mr. JOHNSON for the place he was then filling. Is that true? If so, how it fits in with the evidence of MINA JURY, and corroborates it. He says his employment was that of stockdriver, and that he was occasionally employed in slaughtering bullocks. He was called the big butcher. Noticing that he dressed the meat like a trade butcher, he asked him about it, and ORTON told him he had been a butcher on board ship; so that we have the man completely identified. There is another circumstance, that in JOHNSON'S

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* The following Letters have been published with reference to this man:—

HOPWOOD, "THE FREEHOLDER."

TO THE EDITOR OF 'THE ENGLISHMAN.'

SIR,—In your impression of last week, I am requested by Mr. HEAPS, of Peckham, to give him some information respecting WILLIAM HOPWOOD, "the Freeholder," a notorious Witness for the Prosecution in the TICHBORNE Trial, on whose evidence mainly TICHBORNE was tried and convicted as ARTHUR ORTON. HOPWOOD, the above Witness, lived in lodgings, at No. 32, West-square, St. George's-road, London, with MINA JURY as his wife, until the 4th of May, 1874, when she was arrested and committed for trial. He then returned to Stockport, married Mrs. CLARKSON, his lawful wife being then alive, in that town. On the 20th of May, 1874, he was arrested at the above town for bigamy, and on the 27th of May, 1874, was committed for Trial. He was tried and convicted at Chester on the 10th of August, 1874, and sentenced by Justice QUAIN to 12 months' hard labour. For proof see the Cheshire papers of the 11th August, and also a number of Witnesses in Court who heard the sentence, but which was afterwards altered to 6 months. I believe he followed no occupation while in London, except keeping guard while MINA pawned the articles she at various times stole from various lodgings. After being liberated from Chester Castle at the end of 6 months, he returned to Stockport, sought employment of the agents of Lord VERNON, as a coal-yard labourer, where he has been and is now employed, and receiving the sum of 14s. 6d. per week. Hoping the above facts will be what you require in search of information respecting this "Freeholder," who swore he had 200 acres of freehold land, and rented 120 acres besides,—I am, dear sir, yours truly,

WILLIAM JONES.

TO THE EDITOR OF 'THE ENGLISHMAN.'

January 7th, 1879.

SIR,—In your impression of December 21st of the past year, you were kind enough for the public good to insert a letter from me, giving some information as to the doings of this notorious Witness who was brought forward by the Prosecution in that ever memorable TICHBORNE Trial, to swear away the liberty and rights of a perfect gentleman. In that letter I have misled the public on one point, for which I apologise, as I don't wish to make the case of this man worse than it really is, or to damage the reputation of the Prosecution in bringing a man over, teaching him to swear that he was a freeholder to the extent of 200 acres of land and rented 122 acres besides, well knowing the man never owned a yard of land in his life. In that letter I said that his present wage was 14s. 6d. per week. My informant was wrong, so I am now able to give you the facts required. Shortly after he returned from Chester Castle, where he served six out of the twelve months, he obtained work under Lord VERNON as a coal cart labourer, at a weekly wage of 16s. per week. It was shortly afterwards raised to 18s. per week, and he is now receiving 20s. per week. His postal address is No. 13, Brook-street, Daw Bank, Stockport.—Yours truly,

257, Middleton-road, Oldham. WILLIAM JONES.

23, Park-road, Peckham, S.E., Nov. 16th, 1878.

SIR,—In compliance with the resolution passed by the Committee of the Peckham United Branch of the Magna Charta Association, I beg most respectfully to ask you: First, Where are the lands situated in Australia, as sworn to by HOPWOOD as being in his possession, the said HOPWOOD being an important Witness for the Prosecution (and described as "a respectable Freeholder") in the Trial at Bar against the Claimant to the Tichborne Title and Estates? Secondly, What has become of the said lands, and in whose occupation are they at the present time?

You will understand that as the Claimant was convicted upon the evidence of such Witnesses, and as his Advocate, Dr. KENEALY, was disbarred upon the ground, amongst other things, of questioning the truthfulness of Witnesses, Magna Chartists are anxious to have the truthfulness of this Witness confirmed or otherwise as to the fact of his being, or not being, a Freeholder. —I am, Sir, your very obedient servant,

W. HEAPS.

[REPLY.]

Whitehall, December 2, 1878.

SIR,—I am directed by Mr. Secretary CROSS to acknowledge the receipt of your letter of the 26th ultimo, asking for information as to the property in Australia, sworn to belong to one HOPWOOD, a Witness in the case of REG. *v.* ORTON or CASTRO; and, in reply, I am to acquaint you that the Secretary of State has no information on the subject.—I am, Sir, your obedient servant,

A. F. O. LIDDELL.

Mr. W. HEAPS, 23, Park-road, Peckham, S.E.

23, Park-road, Peckham, S.E., Dec. 21st, 1878.

To the Right Hon. R. A. CROSS, Home Secretary.

SIR,—I desire to acknowledge your courteous and frank reply of the 2nd inst. to that of mine of 26th ult. respecting inquiries therein made relating to the Freehold property of WM. HOPWOOD, a Witness in the TICHBORNE Trial, and beg to say, as your reply positively stated that you "had no information upon the subject," may I not reasonably ask, Is it not within your province to procure that information, this being a matter in which millions of Her Majesty's people are materially interested? And, moreover, may I not ask, Do you not hold the keys which confine the Claimant in his dungeon? And seeing that this HOPWOOD was portrayed almost as an angel from Heaven, and that upon his evidence chiefly the Claimant was convicted as ORTON, and whom you are keeping confined as a prisoner, does not this case deserve attention? Trusting that this serious matter will receive your careful consideration,—I remain, Sir, your very obedient servant,

W. HEAPS.

[REPLY.]

Whitehall, 1st January, 1879.

SIR,—I am directed by the Secretary of State to acknowledge the receipt of your letter of the 21st inst. containing a renewed application for information in the matter of WILLIAM HOPWOOD, and in reply I am to inform you that Mr. CROSS has nothing to add to the letter addressed to you from this Department on the 2nd ultimo.—I am, Sir, your obedient servant,

A. F. O. LIDDELL.

To Mr. W. HEAPS, 23, Park-road, Peckham, S.E.

☞ See *Trial*, Vol I., pp. 139 and 348, also Vol. III., pp. 220-221.

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* Whenever any Witnesses for the Defence made any mistakes in dates, Mr. HAWKINS put down their evidence as unreliable. With HOPWOOD, of course, it was only "a mistake in a date."—

possession at that time there was a horse called Plenipo. On leaving Newburn-park, ARTHUR ORTON went into the service of Mr. FOSTER, at Boisdale, a place about nine or ten miles from Newburn-park, on the other side of the river McAlister, and in that service he remained for five or six months. "I know it," says HOPWOOD, "for I used to see him every day." I turn now for a moment to the testimony of Mrs. MACALISTER, as far as regards ARTHUR ORTON'S service with JOHNSON. It affords a striking corroboration to HOPWOOD'S. She said she was married to Mr. FOSTER (her first husband) in March, 1853, and upon her marriage went to reside at Erin-vale, and remained there until April, 1856, when she went with her husband to take charge of Boisdale and Dargo. Now, Mrs. MACALISTER had a brother, Mr. DESMOULINS, who was in JOHNSON'S service in 1855 during the time she was at Erin-vale. She said, "My brother being in the service of JOHNSON, I remember one day seeing with my own eyes ARTHUR ORTON, in company with my own brother, driving some of JOHNSON'S stock. I could not be mistaken about the man. The same man I saw with my brother I knew as ARTHUR ORTON, because he came into my husband's service in 1856;" so that unless Mrs. MACALISTER is telling us what is wilfully untrue we have overwhelming testimony in corroboration of HOPWOOD, that ARTHUR ORTON was with him in JOHNSON'S service in 1856. In further corroboration of that fact, I am sure you will not forget in one of the leaves of that book which Mrs. MACALISTER lent ARTHUR ORTON was scribbled the name of JOHNSON, of Newburn-park. I deal now with the entry of ARTHUR ORTON into the service of FOSTER in 1856, and the period he was in his service, and in this part of the case I have most overwhelming confirmation of Mrs. MACALISTER'S evidence, not only by books which she produced, but by writing in the hand of ARTHUR ORTON himself. It can leave no question that during that period ARTHUR ORTON, whether the Defendant be ARTHUR ORTON or not, was in FOSTER'S service. Now, about October or November, 1856, having come to Boisdale in the spring of the year, ARTHUR ORTON entered FOSTER'S service. The day of his entry certainly does not appear. It is quite true that there was an entry in the books as to the arbitration proceedings, which shows there was a regular engagement, and there was also an old store-book, in which it was recorded that a pound of tobacco had been supplied to ARTHUR ORTON. He was engaged, says Mrs. MACALISTER, as stockman and butcher. There were about a dozen men in the station, who slept in huts and fed in the kitchen of her husband's house, and ORTON lived and fed as they did. Mrs. MACALISTER assisted in the management of the station, and walked and rode about a great deal with her husband. She was familiar with the names of the men; she nursed them when they were sick, and gave them medicine. On two occasions she attended ARTHUR ORTON, once for a cold and once for a sore throat. She kept a little library, and among her books was a little novel called "The Rivals," which was produced and which she lent to ARTHUR ORTON. I pray your particular attention to that little book. Look at the signature of the vow which it contains, and at the signature to the promissory note, and see if they are not both written by the same hand. And if the Defendant wrote the signature to the vow I entreat you to examine it, as a marvellous interchain by which I mean to connect the Defendant with the man who signed the promissory note at Hobart Town. I invite your particular attention to the "ARTHUR ORTON" on the promissory note, and I ask you whether you can entertain a question as to whether one and the same hand wrote that and the vow in the book. In 1857 ORTON was transferred from Boisdale to Dargo. That vow is dated from Dargo in 1858. It seems to have been distant 60 miles, and ARTHUR ORTON succeeded a man named M'CAUL as head stockman there. He remained till the 1st of July, 1858, and during his stay there HOPWOOD says he again saw him, whether more than once he was not sure. About the 1st of July he presented himself very unexpectedly at Boisdale. Mrs. MACALISTER said she was standing with her husband looking towards the road leading to Dargo when they saw coming along towards them a horse called 'Roan Tommy,' and on 'Roan Tommy's' back was ARTHUR ORTON. Her husband asked him why he had come back, and he replied that the place was too lonely after the disappearance of BALLARAT HARRY. Gentlemen, BALLARAT HARRY was murdered. The Defendant says he was murdered by TOKE, a bushranger, whom he had accompanied at one time. He was permitted to remain at Boisdale, and in October, 1858, he quitted the MACALISTERS' service. On leaving there was a dispute with regard to the wages he was entitled to. ARTHUR ORTON claimed the sum of upwards of £100. FOSTER contended that he was not entitled to it, and upon that dispute arising an action was commenced in one of the courts at Sale on the 11th of November, and on the 13th of January it was submitted to arbitration. On the 27th ORTON gave his evidence before the arbitrators, on which day the award was made. ARTHUR ORTON in his deposition describes his engagement, and says that on the 27th of May, 1857, he went to Boisdale. I call your attention to it because, though it may seem unimportant at first sight, it is important when you come to deal with the question of the corroboration of HOPWOOD. The date of the deposition is the 27th of January, 1859. Now, gentlemen, besides this, we have books, which were produced, and which had been kept at FOSTER'S station, and I should doubt whether any human being would doubt whether ARTHUR ORTON was in the service of FOSTER during the period assigned. Mrs. MACALISTER says:—"Of ARTHUR ORTON'S person I have a perfect recollection. He was a big man, an ignorant man, and had peculiarly formed lips. I recognise that in the Defendant. He had a twitch in the eyes, and light hair." Gentlemen, I shall have much — no, I hope not much—but I shall have something to say about the hair of the Defendant. I quite admit that to-day, if you look at the Defendant's hair, you cannot call it light brown hair. But it is not what it is to-day, but what it was then; and I will show you that it has not only been recognised and identified by the Defendant, but by Mr. GIBBES at Wagga-Wagga. However, Mrs. MACALISTER describes it as light brown hair. She says he had large feet and a clumsy way of walking. Mrs. MACALISTER'S evidence received a confirmation by HOPWOOD, and by her husband, Mr. MACALISTER. He says he did not enter the service till 1857, and said that ARTHUR ORTON was then at Dargo. He had conversation with him, and ORTON told him he had not only been in America but in Hobart Town. So that we have HOPWOOD and Mrs. MACALISTER both conversing with ARTHUR ORTON on the subject of his being at Hobart Town. On quitting Boisdale he went to Sale, and it was in Sale that he commenced this litigation in November, which did not terminate till January. In Sale he was engaged—and was seen by HOPWOOD—in breaking colts with a person named CHARLES WHITBURN. HOPWOOD saw him frequently during that period of three or four months, and spoke to him constantly, and at that time he was well known by the name of ORTON. There was a person named SCHOTTLER also in Sale, who was a friend of ORTON'S. MACALISTER says he saw ORTON in Sale occasionally after quitting Boisdale, thus corroborating HOPWOOD. There is evidence which comes in here of a Witness named REDMOND, a person upon whom a great deal of comment has been made, and though I think he is a Witness of honesty, I cannot help thinking he is labouring under a mistake when he says that he saw ARTHUR ORTON at the end of 1858, at a place called "Nowhere Else." I think that there is nothing that entitles REDMOND to discredit, however. That he did see a person called ARTHUR ORTON engaged in sheep-washing I think is clear. He says that he talked to him of the St. Katharine's Docks, and told him that his father was a butcher. He also said that his brother was the Captain of an East Indiaman, as we know GEORGE ORTON was. He also begged that his being there might not be mentioned. This is all that REDMOND says, and I cannot help thinking that this must be an error of REDMOND'S, as ARTHUR ORTON was at Sale during the end of 1858. Of ARTHUR ORTON by that name we have no further trace, not forgetting the body of evidence the Defendant called for the purpose of showing that ARTHUR ORTON had been in Australia, and was there after the Defendant was in England. I don't forget that, but I will undertake to say when I come to deal with it I will show you that the man who was spoken of by most of the Witnesses could not be the ARTHUR ORTON who was in the service of FOSTER, and could not be the man who was at Hobart Town; and it is with the life of this man that we have to deal. We have no further trace but this: That the Defendant is seen at a place called Deniliquin by a man named MILLER, where the Defendant under the name of CASTRO was mixed up in some charge about a horse. The same man was seen in 1863 at Wagga-Wagga. In Wagga-Wagga the name of ORTON was absolutely unknown as a resident, and I don't think even in the evidence of the Defendant there is a particle of testimony that ARTHUR ORTON was residing there. When I come to connect the Defendant himself with that ARTHUR ORTON in the service of FOSTER at Hobart Town, I shall do so through the testimony of HOPWOOD. He is either speaking truly or falsely. If he is speaking truly his evidence on this part of the Case is deserving of your most serious attention. He says that in 1864, having lost sight of ARTHUR ORTON at Sale, in the company of a man named CHARLES WHITBURN, which would have been in the end of 1858 or the beginning of 1859, he could not very well have forgotten what he was like in that interval. He picks him up again in 1864. HOPWOOD says he went to Wagga-Wagga, and spent a day or two there to buy some clothes, and in consequence of a communication he received he went to a butcher's shop and saw the same man he had known as ARTHUR ORTON. He says he went into the shop and saw the Defendant, and said, "Holloa, ARTHUR, is that you?" The Defendant immediately made a sign to him to be silent. A conversation followed in the course of which a bet arose about the weight of some bags, after which they adjourned to the Commercial Hotel to drink out the wager. "While there," says HOPWOOD, "the Defendant asked me if I had heard anything about a horse he had in his possession at Sale, and he said, "I have changed my name over that horse, and I don't wish to be known by the name of ARTHUR ORTON." He says the name of CASTRO was over the door. That the name of CASTRO was over the door I think one of the Defendant's own Witnesses swore. You know when HOPWOOD was in the witness-box he was attacked as if he had invented the name. If HOPWOOD speaks truth, then no question can arise as regards the fact that the man he saw at Wagga-Wagga was the man he had seen at Sale, and in the service of FOSTER. If you could suppose it possible that HOPWOOD could have retained so imperfect a recollection of the man he had seen in service with him as to make it doubtful or not whether the individual he saw at Wagga-Wagga was the same, it seems to me that that doubt is removed immediately when you come to what follows. Remember the last time HOPWOOD had seen ARTHUR

ORTON at Sale he had been with a man named WHITBURN, and the Defendant asks him in conversation if he had seen CHARLES WHITBURN. The man identifies himself by that. EDWARD PETTITT SMITH is the last witness upon whose evidence I think it necessary to comment in this part of the case. Of Mr. E. P. SMITH a good deal has been said. Did you see anything in the demeanour or conduct of this Witness that leads you to doubt his testimony? He was placed in a responsible position, and was Collector of the Electoral Roll. When he was secretary of the Mechanics' Institute he became acquainted with the Defendant, who was in the service of HIGGINS. He remarked how neatly the meat was cut in HIGGINS' shop, and when he went into the shop he said to the Defendant that it was a treat to see the meat so cut up. The Defendant said if he did not know how to cut up meat he did not know who did, and then SMITH says the conversation turned upon butchering, and the Defendant spoke of certain gentlemen who had places of business in Newgate Market. SMITH said there was no such person as ARTHUR ORTON in that district. Every one of these Witnesses have looked at the Defendant, and say they have no shadow of a doubt that that is the man they have seen. Now what really can fairly be said against a single one of these persons? What, for instance, against the testimony of Dona HAYLEY? You had opportunities of seeing her and watching her demeanour. You saw the tone she assumed, and you can say whether it was likely that she would have exaggerated anything. She said that down to the very last hour that he was in Chili they were on affectionate terms, and there was no reason why she should have entertained any animosity against him. But it is alleged that she had been bribed. I don't know what you will think of it. She received £200 for her journey from Chili, leaving her home, and for her journey back. I don't know whether you will think this was a sum for which she could be induced to commit wilful perjury. What she had sworn before you she had sworn before the Commission in Chili.

Mr. M'MAHON: Can my learned friend go into the Chili Commission? It is not before the Court.

The LORD CHIEF JUSTICE: She was examined before the Commission, and if you recollect when she was questioned as to the amount she was paid I made some observations as I did about Mrs. MACALISTER, to the effect that they had given the same testimony here as upon the Commission.

Mr. M'MAHON: I don't complain of what my learned friend said, but I thought he was going into the Chili Commission generally.

Mr. HAWKINS: Oh, dear, no. I don't want the Chili Commission to corroborate my evidence. My friend need not be afraid that I shall go into anything that is not absolutely necessary, as I have quite enough to do without that. She was examined on the Chili Commission; and certainly on that occasion the Defendant was represented by Counsel, who could have examined her as to any matter they thought erroneous. It would be idle for me to discuss the question further, and I will not insult this lady by assuming for a moment that you think she has committed perjury on the grounds imputed to her. What is to be said of MARY ANN LODER? That is what I want to know very much; because the Defendant's Counsel is obliged to admit that hers is very formidable testimony, and told you once (what he was obliged to retreat from) that she could not be mistaken, and that, if she was not committing perjury, there was an end to the case. What do you say of Miss LODER? Have you seen any ground, indeed, to suppose that Miss LODER was giving you testimony which she did not believe to be true? No human being could know ARTHUR ORTON better than she did. What is to be said against her? She is put down by the Defendant's Counsel among "WHICHER's flock." It is all very well to talk about "WHICHER's flock." Permit me, once for all, to say that I think WHICHER's flock are quite as respectable as WHALLEY's flock that he gathered together at CREIGHTON's. (Laughter.) I shall have to deal with WHALLEY's flock presently, and with CREIGHTON, and amongst others, with the gallant "Captain" BROWN. (Laughter.) I cannot help thinking that, if people will throw stones at some people's flock, they must have another flock brought down on them. But as to WHICHER and CLARKE; I quite agree that you may have detectives who may grossly deceive you, and you may also have men of all ranks and classes who will invent a story to deceive you. But WHICHER and CLARKE belong to a highly respectable body of men, and I challenge any one to point to a single thing, from the time when this Defendant first set his foot in England till now, that WHICHER, or CLARKE, or MACKENZIE has done that has not been done in the strict discharge of the duties they had to perform. They have simply been employed in the detection of crime, and because they have discharged their duty, are they to be branded as perjurers? I shall say no more about them. You have heard a great deal about them, but hard words do not injure anybody's character, and I say there has been no foundation for the attacks upon them. I shall now return to MARY ANN LODER. With a view to destroy her testimony and blacken her character a question was put to her which could have no other object than to insinuate that Miss LODER had been living a life of prostitution with a young man named KEMP, now, to her sorrow, dead, to whom she was betrothed. You remember the question, and you remember how simply and with what modest dignity she repelled the vile insinuation. Was there a pretence for it? The Defendant's Counsel said that she was an important Witness. She has told you upon her oath that this man is the man who made love to her for over a year, and if what she says be true this man must be ARTHUR ORTON. HOPWOOD went out of the box without a question being put to him which could in the least degree prove injurious to his character; but you remember that a few days after a special request was made that he should be recalled. Why? For the sole purpose of damaging his character. He was asked in substance whether he did not desert his wife and family, and HOPWOOD was obliged to reveal the unhappiness of his domestic life. He was made to tell what it was—that his wife had been unfaithful to him, and that he had been forced to leave her. What was there in that to invalidate his testimony? He was moreover asked a certain question as to whether or not he had been guilty of burglary, but it turned out to be a question of damage done to some mats and hats. Except these two unfounded suggestions I fail to see that anything was brought which could in any way reflect upon his character, or one particle of reason why you should not believe him. I come now to Mrs. MINA JURY. I can't help thinking that before he attacked her the Defendant must have forgotten that his own attorney had actually been in communication with her. In Mr. HOLMES's letter addressed to PEDRO CASTRO he says, "I have likewise learned that ARTHUR ORTON was at Hobart Town, Tasmania, in 1853 and 1854, while Sir ROGER TICHBORNE was travelling in South America. ORTON went to Hobart Town in the barque 'Middleton', and my agents have followed his track by means of a cousin of his residing in that town" (this was Mrs. MINA JURY) "who lent him some money, a copy of the receipt for which, and of the promissory note, are now in my possession." So that it is rather hard to turn round on this lady and say she is a perjurer after they have failed to obtain her evidence. *

Mr. TAYLOR (Juror): She had not forgotten the loss of the £14. (Laughter.)

Mr. HAWKINS: No she had not, and fortunately she had retained the promissory note. The recovery of the loan would be barred by the Statute of Limitations, but there is the signature to the promissory note, which is of great importance. Then her testimony is corroborated by Mr. HAWKES, and we have added to this a remarkable piece of corroboration in that pocket-book, which is shown to be in the handwriting of the Defendant, in which we have written in his hand "MARY ANN LODER, Russell's-buildings, Wapping" and we have an entry, false as to ROGER TICHBORNE, that he landed in Hobart Town in 1854. Now Mrs. MACALISTER: Her appearance is respectable, and there is no conduct of hers that can be laid hold of. They cannot show that she said one single syllable here that she did not swear before the Commission in 1869. They cannot point out a single discrepancy in her evidence. But it is said that she is to receive £1,000. Well, I agree, and what is she to be paid for? It is not to add to the story she told in 1869, but for that £1,000 she and her husband have had to undertake a very long, tedious, and perilous journey; have had to leave their business; to pay their passage and expenses. Without that £1,000 they would not have come at all. They have had to put their two boys out because they could not leave them alone at home, and to bring some other children with them. They have said "Please yourselves; we have no desire to come." It makes a very great hole in twelve months, the passage here and back from Australia, and I doubt very much whether any of us, moving in the same station as Mrs. MACALISTER, would undertake the same thing for the money. It seems to me that, instead of abusing them, we rather ought to be grateful to them for coming over here in the interests of truth and justice. Well, now, gentlemen, so far, it strikes me, subject to your consideration of course, that I have traced ARTHUR ORTON by this chain of evidence from the hour of his birth to the time when he is found by HOPWOOD in the butcher's shop at Wagga-Wagga, and, of course, if he is the same man he is the Defendant. If you doubt that the ARTHUR ORTON who once was on board the 'Ocean' is the same person who found his way to Melipilla and stayed with the HAYLEYS and the CASTROS, when you couple the testimony of Dona HAYLEY and the remarkable circumstance that it was exactly a year and a half, during which period ARTHUR ORTON was away from the sea, I think it will remove any doubt. It is nineteen months from July, 1849, to February, 1851, and Dona HAYLEY says the lad was 18 months with them. Her description of him exactly agrees with ARTHUR ORTON. He said he lived at Wapping, and gave the name of ARTHUR ORTON. He described his father as a butcher. Eighteen months after the same man is on board the 'Jessie Miller,' returning to Wapping. Have you now a doubt that on his return he paid his addresses to Miss LODER? Can you question, in the face of her testimony and that of Captain ANGELL, Mrs. MINA JURY, and Mr. HAWKES, that it was the same man who wrote Miss LODER letters from Hobart Town? He did find his way to Hobart Town, and remained there till

* For a history of MINA JURY see Vol. III, pages 219, 220. There is no doubt that the whole of her evidence was false from beginning to end, and that the documents which she produced were forgeries. Superintendent WILLIAMSON proved at the Trial of the Detectives, on November 7th, 1877, that the convict MERCIVINA CAULFIELD was the same person as MINA JURY. Mr. Secretary CROSS in the House of Commons, on June 21st, 1878, admitted this fact to be correct.

August, 1855. Have you any doubt that the man who left Hobart Town in Mr. JOHNSON'S vessel afterwards found his way to Newburn-park? When you find the statements of the Witnesses already referred to corroborated by the testimony of HOPWOOD and Mrs. MACALISTER, who say that this man told them he was a butcher at Hobart Town, have you a question that he remained a long time in JOHNSON'S service, when you have the statement of HOPWOOD and Mrs. MACALISTER that with her own eyes she saw him driving stock, and that afterwards he came into her husband's service? Can you doubt it is the same man when you take the document she has produced, and you see the vow written in the little book, and compare the two signatures with the signature in the promissory note given to Mrs. MINA JURY? If you doubt the honesty of HOPWOOD'S testimony there is an end of it, but if you do not, and if you think that he is speaking the truth, and that he did see the same man; if you believe he is speaking honestly, can you have any doubt that the man he saw at Wagga-Wagga is the man I have traced through HOPWOOD back to Mrs. HAYLEY? This is the way in which I invite you to look at it. Now what has the Defence given in answer to the evidence to which I have called your attention? That he was at Melipilla he admits, and he says that his visit to that little town was in 1853, and he says he was there in the name of ROGER TICHBORNE. He also says he only stayed there two or three weeks, while waiting for a ship to convey him from Valparaiso to Lima; and he swore that while he was there, not being able to speak Spanish, he spoke French. Except in the fact that the Defendant himself was personally at Melipilla, he is conclusively contradicted by Mrs. HAYLEY. She says he was at Melipilla, and that he was there under the name of ARTHUR ORTON. She says the statement that he was only there for two or three weeks under the name of ROGER TICHBORNE is untrue. She said it was untrue when he said that he could not speak Spanish, and spoke French. There was nobody who paid them any lengthened visit at Melipilla, she said; no young gentleman could stay there for two or three weeks without its being known. A man could not be there for more than a day without being very commonly noticed. As she said "Everybody knew everybody." The only persons who were there besides ARTHUR ORTON, were an old man, who of course could not be the Defendant; an Englishman named NARES, and one of the workmen of the Coaching Company. HAYLEY spoke French, the rest spoke Spanish. As regards the residence with JOHNSON, he strongly denies it. There is Mr. MACALISTER'S oath. What its value is you will take into consideration. As regards being in Mr. FOSTER'S service, the Defendant has made a statement. He admits being in the service of FOSTER, but says it was under the name of CASTRO, in 1854, saying that he had been wrecked in the 'Osprey' in the April of that year. We have conclusive evidence that until the month of April, 1856, the FOSTERS never were at Boisdale. As to his being in their service under the name of CASTRO, there is no such name in the books. It is true that some of the leaves were not there, but no sensible person will contend that there had been tampering with the book. It is almost an insult to the lady to suppose that the thought crossed the mind of anybody. Mrs. MACALISTER said, "I swear no such man was ever in our service," alluding to the time they were at Boisdale. With reference to the dockyard at Melbourne, she says that her husband was never there in the whole of that year. There is the testimony of Mrs. MACALISTER. We have the admission of the Defendant that he was in the service of Mr. FOSTER. It is for you, gentlemen, to determine when and under what name. If you say he was there under the name of ORTON, the whole case is concluded. The case of the Defendant, as far as I can collect it—for so many cases have been put forward for him that I cannot tell what he seriously means to put forward as his Defence—as far as I can collect it, it seems to be contended that the Defendant and ARTHUR ORTON were two separate and distinct persons who were together in FOSTER'S service, who were seen together in Australia down to 1865, and in 1865, at Wagga-Wagga, the Defendant was declared the long-lost heir. The case of the Crown is that the Defendant and ARTHUR ORTON are the same individual, that he passed as ARTHUR ORTON before 1860, that he changed his name to CASTRO, and that so he passed till his discovery at Wagga-Wagga in the middle of the year 1865. I propose now to call your attention to the evidence the Defendant has given for the purpose of rebutting the evidence as to ARTHUR ORTON'S life in Chili and Australia. I do so here, because then I shall have disposed of this part of ARTHUR ORTON'S history. I shall then be able to deal with the corroborative evidence when I come to treat of the conduct of the Defendant at Wagga-Wagga, and after his arrival in England. As regards the period assigned to ARTHUR ORTON'S sojourn in Melipilla, the only Witness called is DANIEL COTTON, from Wapping. It is a curious story that this man tells about being upon the American vessels, cruising about in the waters to the westward of California, where he says he saw ARTHUR ORTON; that he removed on shore for two or three weeks, that he tried and failed to induce the captain of the vessel to take him on board, and that in the middle of July he left ARTHUR ORTON at Santiago, ARTHUR ORTON stating that he should remain where he was until he had acquired a little Spanish, and then go to California. He said that while he was with him he never asked him how he happened to get there, but he adds that upon his return to England, which he fixes as at the early part of the year 1851—and this is a very important date—he saw ARTHUR ORTON'S father; that he communicated to him the plight in which he had found his son; and that he had advised him to write out and persuade him to come home. And then Mr. COTTON says he subsequently saw the father again, who then told him that he had written to ARTHUR, and had received a reply from him stating that he had lost a herd of cattle. He says he afterwards saw ARTHUR at Wapping, but he never referred to their meeting at Santiago; and he concluded by saying, "The Defendant is not the man I saw at Santiago." In that I entirely agree with him. Mr. COTTON and I are at one upon that point beyond all question. He is not the man he saw at Santiago, and I will show you how it is almost impossible that the person he saw could have been ARTHUR ORTON. Well, now, if this testimony stood alone, and was incapable of anything like contradiction, I still should ask you to say it was absolutely worthless, seeing that COTTON'S knowledge of the ORTON family is such that he says there was no likeness between them except in their awkwardness; and this is a remarkable thing when we come to deal with the ORTON Witnesses and their recollection of the family. There was another Witness, whose name I now forget, who said they were all awkward, and had humps on their backs like dromedaries (Laughter). COTTON says further that he recollects ARTHUR ORTON was a big fellow with light hair, and that he never saw any trace in him of anything approaching to St. Vitus's dance. This is COTTON'S recollection of ARTHUR ORTON. I tell you candidly I should be disposed to treat his testimony as a pure fiction but for one little circumstance. It is just possible that he may have seen either EDMUND or one of the other brothers.*

The LORD CHIEF JUSTICE: There is a brother—and I must reproach myself for not having thought of it before, and not having further traced it; it was only on looking through the evidence quite recently that I hit upon it—there is a brother ROBERT, whose name I find amongst the baptisms which were proved by the Witness from Wapping, and who, according to one of the Wapping Witnesses called on behalf of the Defendant, disappeared at the age of fifteen or sixteen, and was never heard of after. That may be the man COTTON saw at Santiago, and who told him his intention was to go to Sydney. It is only quite recently I hit upon that name; if I had recollected it before I should have enquired into the matter.†

Mr. HAWKINS: My lord has anticipated what I was about to say to you, though not about ROBERT, for I confess that name did not occur to me, but it occurred to me that he may have met a man who was one of the ORTONS, and it is quite possible that man may have made his way into the interior of the colony and was there seen by a great number of persons who profess to have seen ORTON in various parts of it. But that they saw ARTHUR ORTON I think you will find it absolutely impossible to believe when we come to look a little minutely

* In his opening Speech, Mr. HAWKINS jauntily assumed that by the aid of Miss LODER and others, he would prove the Claimant to be ARTHUR ORTON, of Wapping. In his closing Speech, baffled by the evidence for the Defence, he asked the Jury to believe that there were *two* ARTHUR ORTONS. This was the essence of absurdity, because the ARTHUR ORTON spoken of by each Witness was born at Wapping. If there were two ARTHUR ORTONS, they were both born at Wapping, they both had old GEORGE ORTON, the butcher of Wapping, for their father, they both served in old GEORGE ORTON'S shop, they both had a nervous affection, they both courted Miss LODER, they both went out to Hobart Town with Shetland ponies, and both resided in Australia. There is not in favour of Mr. HAWKINS' absurd supposition a vestige of proof. But why did Mr. HAWKINS adopt so extraordinary a theory? Because Witness after Witness spoke to knowing ARTHUR ORTON in Australia, *and that the Claimant was not in the least like the Wapping butcher.* Mr. HAWKINS, because it was indispensable to his Case, assumed that the Claimant was *right in his dates* as to his Australian experience, and all his Witnesses wrong, although Mr. HAWKINS assumed that the Claimant *was wrong* and the Witnesses for the Prosecution right, *in all the other parts of the Case!* This simple explanation makes the matter plain, yet the Lord Chief Justice, also seeing the insuperable difficulty raised by the Australian part of the Claimant's Case—or overlooking the suggestion now made—told the Jury that he thought there must have been a brother of ARTHUR'S in Australia. This is also a mere theory, unsupported by one word of sworn testimony, and consequently valueless. But let us assume, for argument's sake, that there were two ARTHURS, which is the Claimant? Is he Mr. HAWKINS' ARTHUR ORTON No. 1, or No. 2? or, testing Sir ALEXANDER COCKBURN'S guess, is he EDMUND, THOMAS or ARTHUR ORTON? That Mr. HAWKINS and the Lord Chief Justice should in this, a crucial part of the Case, require *to draw upon their imagination* is, to our mind, fatal to the verdict of guilty pronounced against the Claimant as ARTHUR ORTON. If Mr. HAWKINS believed his own theory, why did he not produce the second ORTON, or give some satisfactory explanation of his identity? His two ORTONS was a mere afterthought, necessitated by the coherent mass of Wapping and Australian evidence.

† The same unfair and villainous reasoning on the part of the Lord Chief Justice was the only way that the evidence of the Witnesses, who had seen the Defendant and ORTON together, could be answered.

into the evidence they have given. We know that ARTHUR ORTON, in the early part of 1851, was on board the 'Jessie Miller' coming home, so that it is impossible that COTTON'S story can be true with reference to that ARTHUR ORTON.

A JUROR: What was the difference of age between ROBERT and ARTHUR?

Mr. HAWKINS: ROBERT was born on the 15th of April, 1828.

The LORD CHIEF JUSTICE: Therefore he would be six years older.

Mr. HAWKINS: I now pass on to the evidence of those witnesses who have deposed to seeing ARTHUR ORTON in Australia, and who have told you that the Defendant is not the ARTHUR ORTON whom they saw; and to the evidence of others who have deposed to having seen the Defendant as CASTRO and a person passing as ARTHUR ORTON together in various places. But before I refer to the statement of any particular witness, let me make one or two passing remarks. It must by no means be assumed that in all the colony of Australia there was but one person passing by the name of ARTHUR ORTON, and that one the individual whose life we are discussing—the son of Mr. ORTON, the butcher at Wapping. If we were to make such an assumption as that, it would become necessary for me to scrutinise the honesty and the accuracy of the testimony of many of the witnesses with whom I have got to deal much more narrowly than I shall think it necessary to do. It strikes me that when we come to look carefully at the evidence, we shall find it irresistibly proved by the Defendant's own Witnesses that there existed in Australia more ARTHUR ORTONS than the one who was in Mr. FOSTER'S service. With that ARTHUR ORTON I have to deal, and with none other. I do not desire to make any sweeping imputation of falsehood upon the whole body of those Witnesses who have been called. Some there are, I confess, whom I shall ask you altogether to disbelieve, because their story is incredible. Others there are whose honest testimony in no degree assists the Defendant's Case, either because the individual whom they knew as ARTHUR ORTON could not have been ARTHUR ORTON of Wapping, with whom I am alone concerned; or because they retain a very imperfect recollection of the man, whom they actually did see. We have heard in the course of this inquiry more than once of the frequent adoption of names and the interchange of names among a certain class of persons to whom, I may take it without fear of contradiction, ARTHUR ORTON belonged. It is not difficult to guess the reasons for such interchanges. The Defendant himself, in the course of his cross-examination in the Court of Common Pleas, said that he took the name of CASTRO (that is an assumed name), and that he afterwards upon one occasion changed that for a time to the name of MORGAN. When he was pressed by my friend, the then Solicitor-General, for a reason why he changed it to MORGAN, he said very frankly that he declined to say, because if he told the truth he might criminate himself, and render himself liable to a criminal charge. Moreover, his ARTHUR ORTON, according to his own account, also changed his name in the year 1862 to ALFRED SMITH, for a reason —it was only ringing the changes—because he had done something that did not conform to the law. (Laughter). You know this shifting of names amongst a certain class of people is very useful to defy such people as WHICHER and CLARKE. (Renewed laughter.) By such tactics they successfully contend against detection. Therefore, when I find a Witness is speaking of having seen a person passing as ARTHUR ORTON whom he does not recognise as the Defendant, I am by no means driven to impute dishonesty, as a matter of necessity, to that Witness. But I will undertake, in the course of my observations upon the Witnesses who have been called, to show you that, if speaking honestly, they cannot be speaking of the ARTHUR ORTON who, in 1856, was in the service of Mr. FOSTER, because I shall show you that at the dates they assign for their meeting with their ARTHUR ORTON, the man of whom I am speaking was far and far away. I shall show you, moreover, in other instances, that their testimony as to the ARTHUR ORTON they say they saw is in direct conflict with the testimony which the Defendant himself gave when he professed to give a description of his ARTHUR ORTON. Now, Gentlemen, I know how convenient it is to make one broad and sweeping assertion about dates. I can understand that dates are sometimes very inconvenient things, and if you have no other mode of getting rid of them, it is a very easy thing to say, "I don't care about dates; I will not be bound by dates; ten years more or less are nothing to me." But it is everything to me and to the interest of truth. The only mode by which we can arrive at the truth is by looking to see what dates there are upon which we can go. Dates, then, are all-important in this case. As my Lord Chief Justice yesterday pointed out with regard to the lady whose character and honour has been so wickedly attacked, without dates, without getting from the man who makes the charge the date, how are we to refute any statement that an unscrupulous person may make? The dates are important, too, for the purpose of disposing of the Defence which has been thrown up, in order, as I suggest, to blind your eyes to the truth. Allow me to review shortly the evidence given by those witnesses. First, I take the evidence of Mr. ACOTT. His evidence seems to me to confirm the Case of the Prosecution rather than to lend aid to the Defendant's Case. If you believe him, it establishes, according to my view, most conclusively the existence of another ARTHUR ORTON than the ARTHUR ORTON who was in the service of Mr. FOSTER. This Witness says he was on the M'Ivor Diggings in 1855, and that he saw there at a horse sale a man who passed as ARTHUR ORTON. His description is material—"a tallish, raw-boned man, with high cheek bones, light complexion, and a scar on one side of his face." That is ACOTT'S ORTON. Again, he saw the same man on the Big River, and afterwards the same man at Maryborough, when he bought a horse of him, for which he took a receipt from him, but which was signed "A. J. REED." The receipt was produced, and a glance at it shows that it was not signed by the ARTHUR ORTON in Mr. FOSTER'S service.

The LORD CHIEF JUSTICE: What is the date of that receipt?

Mr. HAWKINS: October 10, 1860. Just look at these dates. He saw him in 1855 at the M'Ivor Diggings; he saw the same man about Christmas, 1857, at the Big River; and October, 1860, again at Maryborough. So that we have the same man at these three dates. There are two reasons why this cannot be the same man. Take the middle date. In 1857 ARTHUR ORTON was, as we know, during the whole year in the service of Mr. FOSTER, either at Boisdale or at Dargo. There is no pretence for saying that during that year he left Mr. FOSTER'S service at all.

The LORD CHIEF JUSTICE: Unless the distance makes it out of the question, it is always possible, though in service at Dargo or Boisdale, as the case may be, that he might have some business about cattle which took him to these diggings.

Mr. HAWKINS: Well, take 1855, when ACOTT says he was at a horse sale at the M'Ivor Diggings, and that he saw a man there who passed as ARTHUR ORTON.

Mr. Justice LUSH: At that date ARTHUR ORTON was in the service of JOHNSON, of Gippesland.

Mr. HAWKINS: Yes.

Mr. Justice LUSH: And what is the distance?

Mr. HAWKINS (referring to the map): About 260 miles as the crow flies.

[The Court here adjourned for lunch.]

On reassembling, Mr. HAWKINS continued: Just let me dispose of the three dates, 1855, 1857, and 1860, which are those we have got to deal with. In 1855, till late in the month of August, ARTHUR ORTON, whom for the sake of better understanding I will call the true ARTHUR ORTON, was at Hobart Town. If HOPWOOD tells the truth, afterwards in the same year this man was in JOHNSON'S service, because HOPWOOD found him there in the same year. In 1857 Mrs. MACALISTER conclusively proved that the Defendant was in her husband's service, either at Boisdale or Dargo, throughout the whole of that year. Besides that, the Defendant's own statement is that during that year ARTHUR ORTON was at Boisdale and Dargo. Then, as regards 1860, we have the receipt, which speaks for itself, and it seems to me conclusive that it was not the same man that wrote to Miss LODER. It is not sufficient merely for me to dispose of ACOTT. Supposing ACOTT to be right in saying he saw a person named ARTHUR ORTON in 1855 and 1857, and having shown you he was not the true ARTHUR ORTON, I now propose to show you the description of ARTHUR ORTON whom ACOTT saw. ACOTT'S testimony amounts to this—that as early as 1855 he saw a man passing as ORTON, who was a tall, raw-boned man, with a scar on one side of his cheek, and that man, by that name and by that description, who cannot be the true ARTHUR ORTON, is seen by ACOTT during the five years. It is by no means improbable that ACOTT'S ORTON is the ORTON seen by several Witnesses who have been called before you, who are honestly speaking to what they think is the truth; but they are not speaking of the man whose life we are dealing with. Now, let me take HAYDON'S testimony. He says he became acquainted with ARTHUR ORTON at Callingwood Flats, two miles out of Melbourne, about the end of 1854; that he met him several times; that he was butchering as a journeyman slaughterman, and that he never saw him after 1854. It cannot be the true ARTHUR ORTON, because during the whole of 1854 the true ARTHUR ORTON is at Hobart Town, where he is seen by Mrs. MINA JURY, and we have the promissory note signed by him.* HAYDON says that he saw the Defendant as CASTRO at Omeo in 1858 or 1859, and at Tumburumba and Tumut in 1860. He does not fix the date accurately; but that is immaterial, because my Case is that after 1859 the Defendant did pass by the name of CASTRO, so that HAYDON'S evidence literally comes to nothing. But if it were ten thousand times more important than I have shown it to be, what is the value of the testimony of a man who says in 1872—12 years after he had seen CASTRO in Australia dressed as a butcher—that he immediately recognized the man, altered in appearance as he was, driving down in his brougham to Westminster Hall? I venture to say that if he had seen his own brother in Australia in the rough bush dress and beard and moustache, he would not have recognised him again in a different dress as he passed in a brougham 12 years afterwards.

Mr. TAYLOR (a Juror): Does he not say in cross-examination that he first saw CASTRO at the end of 1854, and that he could not fix the date to within two years?

Mr. HAWKINS: That is so.

Mr. Justice LUSH: And that Witness says he understood that CASTRO was stock keeper for FOSTER?

Mr. HAWKINS: That is so. In point of fact, then, Mr. HAYDON'S testimony, so far as the value of it is concerned, only establishes the proposition I desire to establish—namely, that

* This was a forged document.

there were other persons named ARTHUR ORTON who were wandering about in Australia, and as to CASTRO, he gives no evidence which in the least degree removes me from the position I have taken up. Now, let me take the next Witness, WOODYATT, who in 1856, went out to Australia. He went to keep a butcher's shop at Killoe's Plain, and his business took him to Melbourne, where on one occasion in December, 1856, he met ARTHUR ORTON and two others, and spent the best part of an evening with them. He goes on to say he afterwards saw him at Carrigan, thirty miles west of Ballarat, in November 1858, at the shop of a Mr. MUIR, cutting up meat. He says that he appeared to be associated with three or four rough fellows, who were ready to plunder anybody. Now, WOODYATT first saw the Defendant about April last at a music hall, and he says he is not a bit like the ARTHUR ORTON he saw at Melbourne. I do not say he is. My Case is, he is not the same man. Who Mr. WOODYATT'S ARTHUR ORTON was I do not pretend to say; but as far as regards the true ARTHUR ORTON we may dispose of it in this way. WOODYATT says that in December, 1856, he saw ARTHUR ORTON at FLEMINGTON'S Stockyard, near Melbourne. Now, the Defendant himself says that ARTHUR ORTON was at Boisdale from the latter end of 1855 to 1857, and his own Witness, JANES, says that in November, 1856, ARTHUR ORTON was in the service of Mr. FOSTER, and that he was actually there with him and CASTRO at the same time, directly contradicting the story of Mr. WOODYATT. Let us take the year 1858, in the month of November, when WOODYATT says he saw him at Carrigan. Now, in November, 1858, the true ARTHUR ORTON is with FOSTER, and his litigation begins in December, and at Sale, on the 27th of January, 1859, he received the award. That is proved by the handwriting of ARTHUR ORTON himself. Let me see, again, what the Defendant says, because my case is that nobody knows more about ARTHUR ORTON than he does himself. (A laugh.) He says he met ARTHUR ORTON on the Avon river in 1858, and was constantly with him until the end of 1859, when, under the name of CASTRO, he (the Defendant) was jointly tried with him at Castlemaine for horse-stealing. We know that to be untrue, according to Mr. PURCELL'S search of the police books. But independent of that, Mr. WOODYATT says that he never saw ORTON and CASTRO together—he only saw ARTHUR ORTON, and taking into consideration his dates, he is quite right in saying that this Defendant is not the man. I come now to a very odd sort of person, THOMAS TREVITT, who says he went out in the year 1856, and was slaughtering sheep for some young settler at the Avoca Diggings. He met ARTHUR ORTON in the settler's service, and at the end of a week he and ORTON quarrelled about a little shop which the settler had left behind, and it ended with TREVITT threatening to expose ARTHUR ORTON on a charge of murder and horse-stealing. He says that ORTON went away, and he never saw him afterwards. He describes him as 5ft. 10in. in height—that is, taller than ARTHUR ORTON was; he only measured 34 or 35 inches round the chest; he was a bullocky man; he turned one foot out; he had a scar across the right cheek; and he wore earrings; he had a villainous look; and spoke with a very gruff voice. The Witness finished by denying that the Defendant was the man he saw at Avoca. Well, TREVITT told us in cross-examination that he left England in June, 1852, for Adelaide. He stated where he was at various dates until he arrived at Avoca in 1856, where he met ARTHUR ORTON. According to the Defendant's own story at that very time his ARTHUR ORTON was at Boisdale, and according to MACALISTER and HOPWOOD he was in JOHNSON'S service early in 1856, preparatory to going into FOSTER'S service at the latter end of that same year. There is not a soul except TREVITT who ever suggested that ARTHUR ORTON was at Avoca in 1856; and it seems to me that these dates conclusively show that this man cannot be speaking with anything like that accuracy you have a right to expect; if he is speaking with accuracy his dates most conclusively destroy the value of his testimony to disprove the identity of this man with the true ARTHUR ORTON. Then came EDWARD LOCKE, beadle and boiler-maker. He had a gold-laced hat, and was a man in authority, but not in this Court. (A laugh.) If he had, I think the first thing he should have done would have been to take himself into custody and fine himself 5s. for drunkenness. (A laugh.) He said he met ARTHUR ORTON and CASTRO together in December, 1856. He described his ARTHUR ORTON—his ears and his great hands and feet. In the whole course of my life I never met a set of people who took such notice of hands and feet—(laughter) and, stranger still, it is not the women, but the men. (Renewed laughter). The witness goes on to say he was pock-marked over the forehead, and had one mark on his nose. He had a scar on his left cheek; but Mr. TREVITT said it was the right cheek. If they meant the same man, what is the value of their recollection? Then Mr. LOCKE cannot have spoken of the true ARTHUR ORTON, because in 1856 he was at Newburn Park and Boisdale. Even the Defendant says his ARTHUR ORTON was at Boisdale in November, 1856, and therefore the evidence is worthless. In all the cross-examination of the Defendant he never stated that he was with ARTHUR ORTON at Melbourne in 1858. That brings me to the evidence of a very remarkable witness, namely, CHARLES JANES, the sly grogsman, and I ask you to believe nothing he said except that he is a sly grogsman, and that he has no objection to have a gang of bushrangers for his customers. That is his own account of himself. He was called into the witness-box on the 29th of August, without a moment's notice, fresh from the society of JEAN LUIE. LUIE said he had seen JANES at Ballarat, and on the morning he was called into the Witness-box he was conversing with him at Poet's-corner. On the 29th of August, seven weeks after JEAN LUIE had told his tale at Poet's-corner, he was called as a Witness. As regards this part of LUIE'S evidence, I am not disposed to suspect what he said; for though he went to Poet's-corner as early as the 7th July (if he was not speaking an untruth in that), there were persons at Poet's-corner able to put a value upon a comparison of the statements of the two men. Take LUIE'S story strictly for the purpose of showing how this man is examined—that he, and JERVIS and LEWIS, two men from the 'Bella's' wreck, and ANDERSON and M'CARTHY, two men from the 'Osprey,' advanced into the interior; and that at Ballarat they came across this man JANES, and that JANES had a conversation with LEWIS and JERVIS; and this has never been contradicted. That story had been told by LUIE at Poet's-corner to those who were conducting the Defendant's Case so early as July 7th, and I think I have a right to say that Mr. WHALLEY knew it. They called this man JANES into the Witness-box on August 29th, fresh from the society of LUIE. Of all things it was the most important for them to know what was stated about Ballarat. If they thought LUIE told the truth, and that JANES had really met these people at Ballarat, is it possible that any man could have been so idiotic as not to ask JANES to tell the tale which LUIE said he could tell? Not a syllable was put to JANES to elicit such a story. I draw the conclusion, as to both Witnesses, that LUIE was not believed, or they would have endeavoured to corroborate him. In his examination in chief JANES said that in the latter part of 1854 he saw CASTRO and ORTON together at Castlemaine; that they had just come out of the bush; that he saw those men again in 1855, again in 1856 in the neighbourhood of Castlemaine, and again at Bendigo early in 1858, leading the life of bushrangers. He gives you an account of these two men from 1854 to 1859. He was examined in chief after Mr. WOOLNOUGH had been examined. Mr. WOOLNOUGH said that the man he saw at the butcher's shop had a mark on the nose, and I suggest to you that this evidence made him speak of the mark on the nose. Then he says he was slightly freckled with the small-pox, and his ears were pierced, and he used to put gum-leaves in the holes. Why, on the face of it this story of JANES was false. As to 1854, it was in direct conflict with all the Witnesses who spoke of his being in Hobart Town, and in direct conflict with the evidence of the Defendant, who said that in 1854 he was at Hobart Town. In 1855 he divided his services with Mr. JOHNSON; he remained there in 1856, and afterwards he went into the service of Mr. FOSTER, and in 1859 we find him at Sale, hundreds of miles away, summoning Mr. FOSTER for wages; so that we have him disposed of up to 1859. I wonder if the year 1854 was hit upon to suit LUIE'S story. The Lord Chief Justice, in his desire that no Witness should be led into error, said, "As to 1854, the date is impossible," and when Mr. JANES got out of the Court he looked into the matter, and found that it was impossible. My learned friend, Serjeant PARRY, applied for a postponement of the cross-examination of the Witness in consequence of having received no notice; and on the Monday morning, when he came up for cross-examination, this man, with affected candour, said, "I should like to correct an error I fell into. I told your lordships and the Court on Friday that I had seen ARTHUR ORTON and CASTRO from 1854 to 1859 at Castlemaine, but that was altogether wrong," as if we could not see through it. Then he says, "It was quite a mistake, I did not see him in 1854, I did not see him in 1855, or in 1856, or in 1857, but in 1858 was the first time I made his acquaintance, at Castlemaine."

Mr. Justice LUSH: Is that so? According to my note he said he did not see him in Friar's Creek in 1854.

Mr. HAWKINS: He says, "I made a mistake as to the first time I saw them. It was the beginning of 1858 when I saw them at Friar's Creek." He ignored altogether having seen ORTON at Castlemaine. Even this altered and correct date is absurd, because down to the 15th of October, 1858, he was in the service of Mr. FOSTER, and he was engaged in litigation in the latter part of the year. This is the evidence of JANES, and it is for you to say whether you believe this man's story. The next man is PAVIS, the Newmarket "tout," who speaks to 1858. Now, the question was asked, why should not a tout be respectable? I am sure I do not know why he should not be, but, generally speaking he is not. (Laughter.) That is a matter of fact than which no proposition, I think, is more universally assented to. (Laughter.) The Witness describes himself as a drover, and says he travelled with a "mob" for one and a "mob" for another. He was a common drover. He says he saw ORTON in 1858 at Demiliquin, driving cattle, and later on at a place some 50 miles off, driving a cart. He says he never exchanged a word with him. Now, fancy a man like that having the impudence to come forward and say, "I recollect his eyes and eyebrows, his mouth, his hands, his feet, and his cheek," with the minutest particulars; and then he swore to having seen the Defendant as CASTRO in 1859, as a butcher at Wagga-Wagga. Now, that is not true, because in 1859, we know that the Defendant was not at Wagga-Wagga at all. I won't waste more time on PAVIS. I come now to Mr. PHILLIPS, a Witness who I believe speaks the truth, and I say his evidence is conclusive to show that there was another ARTHUR ORTON. PHILLIPS is called to prove that the Defendant is not the man he prosecuted for horse stealing. Let us see what his story is. He says that in 1857 or 1858 a bay horse was

stolen from him whilst he was living near Bendigo. He went to Castlemaine to look after it, and there he saw a man whom he had known as ARTHUR ORTON riding it. He gave him in charge, and the man gave the name of SCOTT (you know we never heard of our ARTHUR ORTON going by the name of SCOTT), and in that name he was tried, and the Jury, giving him the benefit of the doubt, acquitted him. Mr. PHILLIPS never saw him afterwards, and he says that the Defendant is not the man he prosecuted. Now let us look at the dates. PHILLIPS said the trial took place twelve or fifteen months before he left the colony, which he fixes as being in the middle of 1859. This, of course, would bring the trial down to the middle of 1858, and in the middle of that year we know ARTHUR ORTON was in FOSTER'S service. So that giving Mr. PHILLIPS credit, as I do, for having told the honest truth, this conclusively proves that there must have been another ARTHUR ORTON. And there is another reason for it. The Defendant has never suggested, as I said before, that his ARTHUR ORTON passed by the name of SCOTT at all; but he has suggested that his ARTHUR ORTON was tried for stealing, not a bay horse, the property of Mr. PHILLIPS, but a grey mare, the property of Mr. BURGESS. He fixes the date at the latter end of 1859, and he says that ORTON and CASTRO each stood in the dock in his own name. Mr. PHILLIPS'S story, therefore, is totally useless to the Defendant; but it is of great service to me when submitted, as I have submitted it, to analysis. Gentlemen, I keep my eyes steadily fixed, and will do so until this Trial concludes, on the true ARTHUR ORTON of Wapping, and as to what becomes of the other ARTHUR ORTON I will not occupy your time by inquiring. Now, Gentlemen, if I wanted more conclusive proof to upset the theory that Mr. PHILLIPS'S ARTHUR ORTON is not the same man as the Defendant's ARTHUR ORTON, I could call your attention to another circumstance connected with Mr. PHILLIPS'S evidence, which makes the fact still more certain. He says that his ARTHUR ORTON was in custody for two or three months, and that, therefore, would take those two or three months out of 1858. He could not, therefore, be FOSTER'S man, and his evidence is valueless to the Defendant; but it is of great value to me, as showing that there were other ARTHUR ORTONS in Australia. I come now to a Witness whose evidence is rendered suspicious by the fact that he was produced by Mr. GUILDFORD ONSLOW. (Laughter.) This Witness is Mr. SAMUEL SAMUELS, the commission agent, who had but one interview with the Defendant, to whom he was introduced by Mr. GUILDFORD ONSLOW at Bessborough-gardens, and who had seven or eight interviews with Mr. ONSLOW at the Reform Club. His evidence is remarkable. He says he arrived at an hotel at Castlemaine on Christmas-day, 1858, found there two men named CASTRO and ORTON, and remained there with them for four consecutive months. He says that ORTON was about 5ft. 7in.—less than CASTRO—a strong-built, rough sort of man. He recognised instantly in the Defendant, when he was at the Philharmonic, coming out of a private box in evening costume, the rough fellow named CASTRO with whom he had been at Castlemaine. He says it; we are not bound to believe it—and we don't. (Laughter.) We all know that the Defendant is greatly altered since 1858. You cannot have a better example of that than by comparing him as he sits there with the photograph he sent home to Lady TICHBORNE. I should like to make Mr. SAMUELS see that he is wrong. What is his statement? He says that he met the two men at table at the hotel on this Christmas-day; but if you turn to Defendant's affidavit, sworn on June 1st, 1868, he was at Omeo at this very time, and Omeo is 170 miles from Castlemaine as the crow flies. Again, the Defendant swore also, "after I left Gippesland I did not see ARTHUR ORTON again for some years." The affidavits are conclusively contradictory of Mr. SAMUELS, though I care not whether we take the affidavits or the evidence in the other trial. But I have also the testimony of Mrs. MACALISTER. How could we have ARTHUR ORTON, who left the service of Mr. FOSTER in the last month of 1858, or the first of 1859, at Sale, 170 miles from Castlemaine, in the presence of the Witness, on Christmas-day? I now come to Mr. WOOLNOUGH, the stationer at Lower Norwood. He said that he was at Reedy Creek in 1859, and remained there upwards of a year; that in the early part of that year he saw ARTHUR ORTON in Mr. M'MANUS'S service in the neighbourhood, and that the Defendant is not the same man. My first observation upon Mr. WOOLNOUGH'S evidence is, that it in no degree displaces that of Mr. and Mrs. MACALISTER and Mr. HOPWOOD. Supposing for a moment that Mr. WOOLNOUGH'S testimony conclusively showed that the Defendant could not be the man whom he saw at Reedy Creek; supposing, for example, he had said that that man had only one leg and one arm, while the Defendant has two legs and two arms, that would not disprove the other testimony to which I have alluded. Mr. WOOLNOUGH saw ARTHUR ORTON, according to his own account, only casually; he saw him at the shop once or twice, and occasionally saw him driving a cart; and he never exchanged a word with him beyond such words as were necessary in the transaction of business. What is that compared with the testimony of Mr. HOPWOOD, who says—"I slept in the same place with him, I dined with him, I breakfasted with him, I was in service with him, saw him at Dargo and afterwards at Sale, and when I afterwards saw him at Wagga-Wagga he inquired of me about a man named WHITBURN whom he had known at one of those places"? Must you not at once come to the conclusion that Mr. WOOLNOUGH'S testimony, though it may be honest, is not to be relied upon? He does not recognise the Defendant as ARTHUR ORTON. Do you think, gentlemen, that if you went to a rough slaughter-yard, and saw a man in slaughter-yard dress, with thick heavy boots, and with a face on which the beard and moustache had been allowed to grow to a great length, and you afterwards saw that man dressed like a gentleman, and in a totally different position, do you think you would recognise him under such altered circumstances? It appears on close examination that Mr. WOOLNOUGH only saw ARTHUR ORTON for two or three months in 1859. He says, "I never spoke to him except in the shop; I have no recollection of his voice; my general recollection of the man is that he had fair hair, that he was tall, that he was awkward in his movements, and that he had a pock-mark on his nose." That pock-mark is no doubt the one which was adopted by JANES after his first examination. Mr. WOOLNOUGH also says that he remembers no scar. On the question of identity he says—this is his own language—"I fail to see a resemblance to ARTHUR ORTON in the Defendant." That is the extent of his evidence. Can you be surprised at that when in the one case he saw a rough-looking Australian butcher, and in the other a man dressed in the garb of a gentleman? The man whom Mr. WOOLNOUGH saw at Wagga-Wagga had, he says, rough, dishevelled hair; the man whom we see here has his hair neatly cut and nicely greased. The "muscular man without a big belly," of whom this Witness spoke, is changed into that (pointing at the Defendant). Are you surprised that Mr. WOOLNOUGH did not recognise him? Mr. WOOLNOUGH'S interviews with the Defendant in England were well calculated to make him doubt whether he was the man. He first saw him at Croydon, and he says that when he talked to him on that occasion about Reedy Creek he told him that he had never been there, and did not know the name. In the second interview, which took place at Bessborough-gardens, he denied that he knew the name or the existence of M'MANUS. He forgot that in his cross-examination in the Court of Common Pleas he said that he knew Mr. M'MANUS, and that he was in his service a few months before he was charged, together with ARTHUR ORTON, with horse stealing.* The object of the denial was, no doubt, to put Mr. WOOLNOUGH off his guard and to prevent him from recognising him. There could be no other object in telling that falsehood. If you look closely at the testimony of Mr. WOOLNOUGH, you will, I think, find that it is rather in favour of the Prosecution than of the Defendant. Being shown a photograph of the Defendant which was sent home by him to Lady TICHBORNE as a likeness of himself, and which was taken in Australia in 1865, the Witness said, "This appears to me the rough kind of man he was; he is altered since then." We know that; we have only to look at the Defendant to see the alteration. "I think there is a resemblance," the Witness goes on to say, "both in the head and in the expression of the mouth." "As to the voice," he says, "ARTHUR ORTON'S was not clear, and the Defendant's is not much clearer, though the tone is a little higher. The shoulders of ARTHUR ORTON were, I suspect, about as broad as that" (referring to the photograph). I do not impute dishonesty to Mr. WOOLNOUGH; but what is the value of his testimony in reference to the identity compared with the evidence of Mr. and Mrs. MACALISTER, Mr. HOPWOOD, Mrs. MINA JURY, Miss LODER, Mr. ANGELL, and others? I now come to BENJAMIN WARD. This Witness tells us that he went to Melbourne in 1857; that having afterwards spent some time at Ballarat he found himself about the end of 1859 at Myrtleford, near Castlemaine, and there became acquainted with a man named ARTHUR ORTON; and that the Defendant is not that man. He said, "I saw no twitching," and I think he added that he saw no scar. Now, gentlemen, you may remember that Mr. WARD was the man who said that ARTHUR

* The above allusion to M'MANUS is a specimen of the "enormous lying" to which all concerned against the Defendant resorted. Mr. HAWKINS distinctly avers that TICHBORNE owned to a knowledge of M'MANUS. We find this distinctly contradicted in the very cross-examination to which Mr. HAWKINS referred. Thus: "This was you say, 1859. Were you at that time in the employ of a man of the name of M'MANUS?—No, I was never employed by a man of the name of M'MANUS. Did you know such a person?—Personally, No."—Page 1365. See again. "Do you know PATRICK M'MANUS?—I do not. You have read this with care?—I have not, quite the reverse. Do you know M'MANUS?—No, I do not know anyone of the name of M'MANUS." Page 1455. Again, "Did you know a Mrs. M'MANUS, the wife of PATRICK M'MANUS?—I did not. You never were employed by him I think you say?—I never was. Do you really mean to say you were not in their employ, and paid by them from time to time from June 1859.—I mean to say I do not know them, and never had any dealings with them. The Lord Chief Justice: Which do you mean?—M'MANUS and his wife." Page 1463. Again, "Now I have asked one or two questions about M'MANUS, and I will just ask you this, whether you ever told M'MANUS yourself that you were a native of Chili?—I certainly did not. Did you ever tell him you had been in Chili?—I did not know him, therefore I could not have told him anything." Page 1465. Mr. M'MAHON was in Court during this, and we are sorry to say never rose to contradict what he knew well to be false.

ORTON was such an active fellow that he could pick up a sixpence from the ground while galloping on horseback without stopping. If you like to believe that you may; there is nothing to prevent it in this free country. (Laughter.) If you do not believe it you may well ask yourselves why was that introduced? I should certainly never suspect the Defendant of picking up a sixpence from the ground while galloping on horseback—(laughter) nor should I suspect the man whose portrait was sent from Australia of doing anything of that kind. WARD says that he saw ARTHUR ORTON from 1859 till 1863. The Defendant stated that the ARTHUR ORTON whom he knew passed as ALFRED SMITH in 1862. WARD says that he knew ALFRED SMITH, and that he was not ALFRED ORTON; or at all events, not his ARTHUR ORTON. I come now to the testimony of JOHN DYKE, who keeps a public-house at Birmingham. He says that he went to Wagga-Wagga in 1862, and opened a billiard-room; that Mr. HIGGINS afterwards succeeded him in that room, and added to it a butcher's shop; and that the Defendant, under the name of CASTRO, entered Mr. HIGGINS's service there in 1863. He went on to say that he saw at Wagga-Wagga a man named ARTHUR ORTON, who used to come there with cattle. He saw this man there, he said, on three different occasions—once in 1860, before CASTRO came, again about 18 months after, and a third time about 12 months after that. He further said that on one or two occasions his ORTON went to Wagga-Wagga merely to attend the races. If Mr. WARD were speaking the truth, the ARTHUR ORTON whom he thus mentioned was a different man from the ARTHUR ORTON whom we are enquiring about. In the first place, his statement is in direct conflict with what the Defendant himself said. The Defendant said that the ARTHUR ORTON whom we have to do with was in the service of Mr. HIGGINS, and butchering with him; this Witness says that his ARTHUR ORTON was merely attending the races. He says that on one occasion ARTHUR ORTON gave him a promissory note; and when I put the genuine handwriting of ARTHUR ORTON before him he could not recognise it. Further, the Defendant said, "My ARTHUR ORTON changed his name in 1862 to ALFRED SMITH," while this Witness says that after that period he was passing openly by the name of ARTHUR ORTON. That Mr. DYKE is a Witness who was very well acquainted with the Defendant may be assumed, I think, from the way in which he saluted him, "Well, old Chips, how are you?" *Como esta*, Chips? (Laughter.)

[It being four o'clock, the Court then adjourned.]

The 'Daily Telegraph' summary-writer winds up as follows:—

"Other Witnesses besides Mr. ACOTT were touched upon. There was COTTON, the 'pirate,' and JANES, the 'respectable sly grog-shop man,' and PAVIS, the tout; and, finally, there was DYKE the billiard-room keeper, who, meeting the Defendant after many years, had been greeted by him with 'Holloa, Chips! how are you?' '*Como esta*, Chips,' said Mr. HAWKINS, with a twinkle in his eye, as he sat down.

"Dr. KENEALY was absent throughout the day. The Defendant listened attentively, and it was evident that the frequent points with which Mr. HAWKINS's speech bristled were not lost upon him. Little notes were frequently passed up to Mr. M'MAHON, and short suggestions were interchanged. Of all this Mr. HAWKINS noticed nothing. With his back to the Defendant, with his face to the Jury, he spoke steadily on, articulating every word, noting every sentence, until four o'clock came, and the Court adjourned, to 'resume its studies' at ten this morning."

SCENE IN PALACE-YARD.

Yesterday, says the 'Daily Telegraph,' about ten minutes after the adjournment of the Court, a mob followed Mr. HAWKINS, Q.C., and Mr. Serjeant PARRY, who were proceeding home. At the time the only Officers close to the learned gentlemen were Mr. DENNING, the Inspector of the House of Commons Police, and a plain-clothes Officer, who follows Mr. HAWKINS daily when he leaves the Court. Inspector DENNING tried to keep the mob back, but his efforts were useless. However, in a minute or so another Inspector and several Constables ran across from the Judges' private entrance to the Court of Queen's Bench, where they were on duty, and formed a cordon behind the learned Counsel. The mob hissed and groaned, and followed the Police along Great George-street, where the crowd gained considerable accessions. At one moment the Police faced round, as if forcibly to keep the people back, but presently they went on again, keeping close to Mr. HAWKINS and Serjeant PARRY. There was much excitement in the street, and the traffic of vehicles was temporarily suspended. When near Storey's-gate, the entrance to St. James's-park, Mr. DENNING sent some constables forward with orders to close the gates when the learned gentlemen passed into the park. The small gates used by pedestrians were at once closed, but it was found impossible to shut these upon the carriage way. The Police, however, stood in line across the gateways and prevented the mob passing through. Mr. HAWKINS and Serjeant PARRY had in the meantime got safely into the park and proceeded homeward. While this was going on at Storey's-gate, the bulk of the people who had come to Westminster to see the Claimant and Dr. KENEALY were shut up in Palace-yard, according to the daily practice after the adjournment. The crowd was let out of the Yard about twenty minutes past four, and they were quite ignorant of what had occurred to the Counsel for the Crown. The news, however, quickly spread, and caused general excitement. A couple of thousand people waited some time to see Dr. KENEALY, but they were not gratified, and soon after dispersed.

MR. HAWKINS' OPENING SPEECH.

A clever writer contributes the following:

Mr. HAWKINS' opening speech has been praised for its conciseness; I wish I could praise it for its sense of fairness. His first few sentences were saturated with the passion of paid advocacy, such as I should have expected from the Counsel of the Lady ALFRED TICHBORNE, but not from the representative of the dignity, the impartiality, and the sublime sense of justice of the QUEEN. The Defendant had been charged—Mr. HAWKINS said—with crime as black and foul as justice ever raised her sword to punish. Had the Claimant been accused of murder sevenfold, of highway robbery ten-fold, and of as many minor crimes as the Newgate Calendar could contain, Mr. HAWKINS' words could not have been stronger or more sweeping. Unless perjury is a greater crime than murder, Mr. HAWKINS' words were scandalous, misleading, and intended to inflame the popular passion. One of his earliest statements of fact was tinged with the same passion of paid advocacy. He described the Claimant as "coming forward from the shambles, and announcing himself as the long-lost heir," whereas the fact is, the real Sir ROGER was sought for by Lady TICHBORNE, and the Claimant was "spotted," as everybody knows, by Mr. GIBBES, the Wagga-Wagga Solicitor, and refused to reveal his identity as the "long-lost heir," until strongly pressed to do so. The honest truth was as easily spoken as Mr. HAWKINS' melodramatic narrative, but of course it was less

serviceable when the one aim was the conviction of the accused. How far Mr. HAWKINS would have gone in this direction had the Lord Chief Justice not admonished him, I cannot say. Persisting in assuming that the Claimant was an impostor—which was the point the Jury had to determine—the Lord Chief Justice said the senior Counsel for the Prosecution could surely find language which prejudged nothing, upon which Mr. HAWKINS, profuse in his thanks for the hint, hoped that what he had said would be understood as coming from the lips of an Advocate. While speciously professing that his sole object and duty was to endeavour to assist the Jury in arriving at the truth, whatever that truth might be, and while declaring that it would be disgraceful in him to keep back anything that would aid the Jury in coming to a truthful conclusion, Mr. HAWKINS kept back everything favourable to the Claimant. I can give, if necessary, twenty instances of the truth of this statement.

TICHBORNE LETTER.

The Court, Jan. 15th, 1874.

DEAR ONSLOW,—Yours to hand last night. The Doctor, as you are aware by this time, finished his speech in a very able manner. HAWKINS commenced his speech this morning on the ORTON theory. They say he will continue until next Friday—to-morrow week, and that the Lord Chief will commence on the following Monday.

I really cannot get away on Friday, because I have made arrangements with Miss RUSSELL and Dr. WILSON to have my photo taken in a particular way for some scientific purpose. I have also promised to give a finishing sitting for my Bust.

Mr. HARRISON wishes to get it into the Royal Academy next May. There is plenty of time. I will keep next week free from appointments.—Yours truly,

R. C. D. TICHBORNE.

THE CHARGES AGAINST DR. KENEALY.

An able writer comments thus upon this subject :—

"Let it be remembered, that before the main part of what the Lord Chief Justice calls 'the eternal recurrence of conflicts' between himself and Dr. KENEALY had taken place, Mr. HAWKINS had made his opening address, in which, *with hardly an interruption*, he painted the Defendant as black as Bunyan's Ethiopian, and certain of his Witnesses as designing conspirators, *to which no exception was taken by either Bench or Jury.* Let it further be remembered that Dr. KENEALY, in reply to this serious allegation, charged Mr. GLADSTONE'S Treasury officials with acting in concert, in connection with the TICHBORNE family, for the purpose of destroying the claim of the Defendant to a rent-roll of £25,000 or £30,000 a year, and as a matter of fact the members of the TICHBORNE family and the TICHBORNE solicitor have given the Treasury all possible assistance—in what they no doubt honestly believed to be the cause of Justice and right. I mention this fact merely to show the foundation for Dr. KENEALY'S *counter-charge*, and it is for the public to ask themselves—if the interference of the family was not, to say the least of it, unseemly; and if the QUEEN, with her powers—her able and learned solicitors and Counsel, and her inexhaustible treasury—as represented by Mr. GLADSTONE'S treasury officials, and by Messrs. HAWKINS, PARRY, MATTHEW, BOWEN, and CHAPMAN BARBER—were enough, not merely to grapple with the case, but by their strong intellectual combination, the adroit use of their resources—to say nothing of the work of their detectives—to defeat as great a man as the undoubtedly great Lord DUNDONALD himself, who had to leave England because of the erroneous and blundering verdict of a London Jury on the false charge of stock jobbing? That Dr. KENEALY—acting upon his instructions—was justified in assuming that the family had a desire to keep the ROGER recognised by his mother out of the estates, is to my mind abundantly clear, if nothing else were forthcoming than what Lady ALFRED TICHBORNE'S solicitors—Messrs. DOBINSON and GEARE—wrote to Mr. HOLMES, the Claimant's first solicitor. It will be remembered that in answer to a letter from Sir ALFRED'S widow, Lady TICHBORNE wrote to the former that she was *perfectly satisfied the Claimant was her Son*, and that without seeking further explanation, Sir ALFRED'S widow set her solicitors to work to oppose the Claimant in every way. These solicitors professed that the Claimant would be received with open arms by the TICHBORNE Family on his identity being established; although it has since been shown clearly that the said family, long before the Claimant landed in England, and before they had seen him or could judge of his identity, had branded him as an impostor, and had tried all they could to dissuade Lady TICHBORNE from recognising him. This was obviously unfair to begin with. Mr. HOLMES, his then Solicitor, reminded Lady ALFRED TICHBORNE'S Solicitors, Messrs. DOBINSON and GEARE, that the Claimant had been recognised by the Dowager Lady TICHBORNE as her son; by Mr. HOPKINS, of Alresford; by Mr. BAIGENT, of Winchester, 'an old friend of the family'; and by many of the tenants, servants, and friends, to whom the real ROGER was well known in his youth. More, Mr. HOLMES wrote to Messrs. DOBINSON and GEARE (from whose office the PITTENDREIGH forgeries originated, the husband of Mrs. PITTENDREIGH being employed there) :—'Allow me to remind you of what has been done by, or on the part of those interested in denying his identity. As soon as they were informed of his arrival in England, they caused him to be hunted, and traced his footsteps, and watched his every movement, as if he had been an impostor; and not only that, the press was even influenced to denounce him as such. I know of nothing so painful as the position in which Sir ROGER has been placed by being thus treated. Is there the slightest ground for palliation of such conduct, or for doubting the object which they who pursued it had in view? It was continued towards him after he had placed himself under my protection.' The Lord Chief Justice describes the letter from which I make this extract as written by Mr. HOLMES in *his* high and mighty style. It was unworthy of the reputation of Sir ALEXANDER COCKBURN to endeavour to destroy the inherent force of the letter by judicial quizzing. If the letter was wrong in fact, or unwarranted in tone, the Judge's duty was to have pointed out the same to the Jury. More, it was within the province of Sir ALEXANDER COCKBURN to tell the Jury that the letter from Lady ALFRED TICHBORNE'S Solicitors (Messrs. DOBINSON and GEARE), and to which Mr. HOLMES'S was a reply, was based on a mis-statement of the truth. They wrote 'that no evidence, or attempt at evidence, has been offered to those most interested in the Case.' Who were those most interested? Naturally Lady ALFRED and her infant son. Well, anyone can read for himself in the solemnly sworn affidavit of Lady TICHBORNE, that two months before the date of Messrs. DOBINSON and GEARE'S letter, she had intimated to Lady ALFRED (in reply to an enquiry) that the Claimant was her undoubted son, ROGER. Messrs. DOBINSON and GEARE'S letter was consequently based on what was not true. This point, which went to the very marrow of Dr. KENEALY'S so-called charges of conspiracy, was never once referred to, or even hinted at in the Summing-up of the Lord Chief Justice of England! With the assurance Lady ALFRED had, nothing is to my mind plainer than that she meant on behalf of her infant son, to cling to the estates until she was forced from them, and perhaps nine out of every ten of the mothers of England would do the same, because a yearly rent-roll of £25,000 is not picked up every day, and the first duty a mother recognises is the duty of doing the best she can for her child. She was, I think, entitled to be reasonably satisfied that the Claimant was ROGER, but it appears to me that Lady ALFRED, the family and the family solicitors—having made up their minds that the Claimant was an Impostor—would have required a miracle to persuade them that ROGER really existed in the flesh. Nothing is clearer than that the family treated everybody mercilessly who dared to believe in their consciences that the Claimant was ROGER. Lady DOUGHTY cut off BOGLE'S income because the faithful old negro believed the Claimant was the genuine man, and she would have treated MOORE with equal severity if she had been possessed of the opportunity. Then Mr. BOWKER, the Dowager Lady TICHBORNE'S Solicitor, finding himself dismissed for his hostility, went over body and sleeves to the interests of Lady ALFRED and her son. For seven years his brother has been doing his best to oppose the Claimant in every way, and for five years he has been the industrious letter-writer and collector of everything that could possibly be used against him. GOSFORD not only invaded the Claimant's hotel privacy, but advised the landlord to look after his silver spoons—at a time too, when the same Mr. GOSFORD owed the Tichborne Estates nine thousand pounds! Astute WHICHER and other detectives have dogged the Claimant's footsteps for seven years; ROUSE, his confidant, has transferred his services to the family, having not only handed over all the Claimant's private letters, but copies of those that no one but the sender and receiver were supposed to see! Then the hostile Witnesses were not only paid like nabobs, but a thousand pounds were actually given for a pocket-book, containing entries by the Claimant. Did it require all this complex machinery to overthrow an Impostor—a low Wapping butcher? Clearly not. But £25,000 a year go a long way, and vested interests are very tenacious. 'The family' made war to the knife—even within the portals of the Law Institution, in which Serjeant BALLANTINE and Mr. (now Justice) HANNEN protested against the manner in which the Claimant was treated by the persons crowding round him."

ONE HUNDRED AND SIXTIETH DAY,——FRIDAY, JANUARY 16TH, 1874.

The Trial at Bar of the TICHBORNE Claimant for perjury was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH. Dr. KENEALY was not present.

Mr. HAWKINS, Q.C., continuing his reply upon the whole Case, said—I finished last night with the evidence of DYKE, but there are two or three more of these Australian Witnesses on whom I must briefly comment. There is, for instance, POLE whom I daresay you will remember went with ARTHUR ORTON on "the Wallaby track" (i.e., on tramp), and who shared with him his comb—that comb with an "A," which was tumbling off the edge of it. He remembers the particular position of the "A," and also of the "O," although he was very near losing the "A," because it was almost in the act of slipping off the end when he first observed it. (A laugh.) A good memory has POLE. He says he came across ORTON in November or December, 1860, and he described him with great minuteness and accuracy. He says he noticed the marks upon him, while he was "hunting him over." This Witness speaks of a scar between the thumb and finger, which no one else has ever mentioned; and as to the scar which other Witnesses spoke of as a great big one that nobody could help seeing, he says it was only just discernible. He states that ORTON, while he was with him, was travelling northward from Melbourne towards Wagga-Wagga. That is very inconsistent with the story of DYKE, for he says that his ORTON was in Wagga-Wagga in June, 1866. You will remember that the Defendant's Counsel said he did not care about dates, but in a letter to this Witness he was told that he must be very particular about them.* I come next to GEORGE JONES, who says that in November, 1856, he was in the service of Mr. FOSTER, at Boisdale; that he saw ARTHUR ORTON and THOMAS CASTRO together, and that they were stock-driving; but that ORTON was also employed in slaughtering. There is no doubt that about that time he did go into the service of Mr. FOSTER; but let us see what JONES says further. He tells us that within five months after leaving Boisdale—and he says that he only remained in the service for one month—he saw ORTON and CASTRO together at Stratford for several months. Now, if you can make out that a man is only passing through a place, you may say that he is not absent from his service, but JONES says that he saw ORTON at Stratford for several months together, which is perfectly absurd, for we know that during the year 1857 he was in the service of Mr. FOSTER. The Witness says that in 1858 he saw CASTRO at Sale and bought a horse of him, and at about the same time in the early part of the year he saw ARTHUR ORTON in the service of Mr. M'MANUS at Reedy Creek. On that point he is contradicted flatly by Mr. WOOLNOUGH, who says it was in the latter part of the year when ARTHUR ORTON came into that service, and he fixes it by his mining licence, dated August, and that ARTHUR ORTON came three months afterwards. I must look at the Witnesses, not only as to their honesty, but to see what is the value of their evidence, even assuming they are respectable. Well, then, let us now see how JONES recognised the Defendant. He saw him first at Bristol in 1872, having read a good about the TICHBORNE case, at a meeting. The Defendant was on the platform, supported by Mr. GUILDFORD ONSLOW and others, and was introduced as SIR ROGER TICHBORNE. He says he recognised him by his voice, and that there is no difference at all between his voice and that of the man he knew at FOSTER'S. All this, recollect, is after a period of sixteen years. That the ORTON at Mr. FOSTER'S was in his service in 1856 no one doubts; but that anybody named CASTRO was there between 1856 and 1858 is positively denied by Mrs. MACALISTER, and she is fortified by the books of her husband, which were kept at the time and before any human being had ever supposed that they would be brought into question. They were kept in the ordinary course of business; they were produced before you, and there is not a trace of any one named CASTRO at the time in question. They therefore prove that ORTON was there, and there alone. But what do you think of this man JONES when you look at another part of the story; Mrs. MACALISTER told you that the men took their meals in the kitchen of her own house. She cannot be mistaken about that; but JONES says that the hut in which they slept and that in which they took their meals were two different ones, and that they did not take their meals in the kitchen. I don't like to charge a man with telling untruths, but what am I to say to a Witness who comes forward with a decent appearance, and who yet tells us that a man was in the service who was not there, and who knows so little about the ways of the place as to make such a palpable misstatement with regard to them? Again. He swears that he did not see Mrs. FOSTER at all, though she was in the habit of attending to the wants of the men, and knew them all perfectly, and can give no account even of Mr. FOSTER.

A JUROR: He says he was 5ft. 8in.

Mr. HAWKINS: Yes, that is a good safe medium height, but what I mean is that he gives no particular account of him. Is it not strange that he should be able to describe so minutely persons whom he only saw casually, and yet should know nothing about his own master and mistress? I venture, therefore, to think that his evidence is of so utterly worthless a character that it is unnecessary for me to comment upon it any further. I come now to the Witness GARDENER, a butcher in Kew-road. He says that he saw ARTHUR ORTON in 1857 loafing about Castlemaine with other men, none of whom have been produced. He did not then speak to him or hear his name; but he says that in 1863 he saw him again at Brookgong, and that there he first heard his name was ARTHUR ORTON; whereas the Witness DYKE says that in 1863 ORTON had changed his name to ALFRED SMITH. GARDENER says he did not see ORTON again till 1865, and then he saw him several times as ARTHUR ORTON at Wagga-Wagga. If these two Witnesses, DYKE and GARDENER, are intending to speak of the same man, they flatly contradict each other; for DYKE says he was only at Wagga-Wagga when he came to attend the races, whereas, according to GARDENER, he lived there attending to cattle, and was in the service of Mr. HIGGINS. Besides, during the whole of 1857 ORTON was at Boisdale or Dargo, which are a couple of hundred miles distant as the crow flies; and therefore if GARDENER is speaking the truth, he cannot be referring to the same man. So much for this Australian evidence; and I will ask you if it is really worth as much time as I have now spent upon it? There is not a single one of the Witnesses whose testimony is of the slightest value for the purpose of proving that ARTHUR ORTON was there; with the exception of the two gentlemen whose evidence really was deserving of attention, namely, Mr. PHILLIPS and Mr. WOOLNOUGH, and upon whom I have already commented: the evidence of the one cannot apply to the man we are speaking of, and the other must have been honestly mistaken. I must again remind you that the Witnesses for the Defence only pretend to a casual knowledge, whereas those for the Crown speak from long and intimate personal acquaintance; and so I leave the Australian part of the case. In January, 1865, the Defendant was married to his present wife, a domestic servant. I do not mention that fact as in the slightest degree reflecting upon her, but it shows the class of persons to whom he would naturally go in selecting a wife. He was married just before he took any step towards perpetrating what I call this wicked fraud. It is material to observe that in January, 1865, having then no apparent object to serve one way or the other, he stated that his age was thirty. That does not appear on the marriage certificate, which describes the parties merely as "THOMAS CASTRO, butcher, and MARY ANN BRYANT, domestic servant, at Wagga-Wagga." If he was ROGER TICHBORNE you know his age would really have been about six-and-thirty; and the Solicitor-General therefore asks him why he had described himself as only 30, and as being born in Chili. Listen to his answer, "I suppose I did it for the very reason why I said everything that was false—I did not wish to be known." How on earth could describing himself as six-and-thirty cause him to be recognised? There have been many men, you know, six-and-thirty years of age. All of us have been six-and-thirty; all of us who have not hope to be; and those of us who have, would like to be six-and-thirty again. (A laugh.) To have told the truth would have afforded no clue to his identity: and I submit that he gave his real age. Then comes another question. This marriage was by the Wesleyan minister, and he is asked by the Solicitor-General how an earth he, a Roman Catholic, came to be married by a Methodist. Was there no priest in the district? His answer is, "Well, there was, but I was not friends with him!" You will form your opinion as to the bona fides of that reply. I have now to introduce the Defendant in a totally different character from that in which he

* When this Witness (POLE) was in the box, Mr. HAWKINS cross-questioned him for something like three hours, mainly as to dates and places, but altogether failed to shake him. POLE had written respecting his evidence to Mr. T. M. EVANS, of Leicester, who, with a characteristic anxiety for the truth, asked him to be careful about his dates, and when Mr. HAWKINS came to review POLE'S evidence, he chuckled at the idea that POLE had been too particular, arguing that it was impossible that POLE could have seen ARTHUR ORTON about the time the Claimant reached England. But Mr. HAWKINS reckoned without his host. POLE'S father has since found a letter received from his son early in 1867, referring to the very wanderings and a number of the places POLE swore to in evidence! Now as Mr. HAWKINS nor the Lord Chief Justice never questioned the fact that POLE had met the undoubted ARTHUR of Wapping, the identification being as complete as it could be, the simple question is one of date. That can be established by the Melbourne (Australia) and Leicester post marks, and it can be proved by several Witnesses that POLE stated the substance of his evidence to several Witnesses when the Civil Trial was before Chief Justice BOVILL. The pretence for doubting POLE'S evidence as to dates thus being set aside, we have most positive evidence that ARTHUR ORTON was in Australia at the time the Claimant was in England, and of ORTON and the Claimant being separate persons. POLE'S evidence, standing by itself, and corroborating the other Witnesses for the defence, justifies a legal declaration of a plea of not guilty!

had hitherto appeared, namely, as Claimant to the Tichborne estates. As I shall have to recur to that matter in another part of the case, I shall pass very lightly over it now, confining my remarks only to its bearing upon his identity with ORTON. ROGER TICHBORNE was unquestionably on board the Bella when she foundered in 1854, and Lady TICHBORNE stood alone in refusing to abandon her hope that he was saved. I shall have hereafter to return to that insane delusion, as I must think it. In 1862 she commenced a series of advertisements, of which one appears in the *Times* of the 14th of May, 1863, offering rewards for authentic information of anyone that survived the wreck of "La Bella." Now, gentlemen, in most cases it is beyond the range of possibility to demonstrate with absolute certainty when the germ of a great fraud is first conceived in the mind of its projector. Of that a remarkable illustration has just occurred. I dare say there is not one of you who could tell when the idea of giving evidence first suggested itself to the mind of LUIE or to those who induced him to come forward; so here I cannot tell when the idea first occurred to the Defendant to assume the name and character of Sir ROGER TICHBORNE, or whether any one was associated with him in contriving the scheme.* Great crimes, you know, are ordinarily conceived in secret, and conspirators do not usually form their plans in the light of day. That something, however, was hatching in 1865 no man can doubt who reads in the light of common sense that remarkable letter which was written by a schoolmaster at Wagga-Wagga to Mr. JAMES RICHARDSON, 72, High-street, Wapping, the friend and neighbour of old GEORGE ORTON, and of all men the one most likely to be informed of all the circumstances of the family. That letter I do not hesitate to say was the first step in a scandalous and wicked fraud. It is dated Wagga-Wagga, the 13th of April, 1865. Just pause for one moment, and consider the circumstances under which the letter is written. What could have been its object? Suggest to yourselves, if you can, an innocent motive for sending such letter in the handwriting of a schoolmaster. ARTHUR ORTON since 1855, a period of ten years, had neither heard from, nor communicated with, any member of his family. He knew not therefore who remained in Wapping who might know or recognise him if he returned to England, and he knew not what would be the feeling of his relatives and friends even. If he contemplated a return to this country to prosecute a great fraud would it not be obviously of the utmost importance to him to know what the family thought of him; and could he have adopted any other means than that which he did adopt for the purpose of ascertaining the fact? Who was there, in all that colony that you have heard of, except ARTHUR ORTON, who knew that Mr. RICHARDSON lived at No. 72, High-street, and could give him that address? It is suggested, you know, that the Defendant is ROGER TICHBORNE, and that he wrote as ROGER TICHBORNE to 72, High-street, Wapping? But if he honestly wanted to get the information, why should he not have written to the ORTONS themselves? The Defendant can write in his own way very well; and he can write several hands. We have seen many specimens of his handwriting, and we have seen some in which he assumed the handwriting of others. Why then should he have got a schoolmaster to write for him and to sign his very name. Was he afraid that Mr. RICHARDSON, or any of the ORTON family to whom the letter might chance to be shewn, would recognise the handwriting of ARTHUR ORTON? Gentlemen, you must judge for yourselves. The Defendant's Counsel says that he can give no explanation of that letter; that it could have had no object; and that it was a mere piece of idle nonsense. What could he have thought, gentlemen, that you were made of? (A laugh.) TICHBORNE writing to RICHARDSON, of whom he knew nothing, to make inquiries of ORTON and his family, and telling him a cock and bull story about bushrangers! Did you ever hear of anything so insane? Why, I could hardly believe my own ears when I heard the learned Counsel gravely put such a notion before you, and argued that ARTHUR ORTON would not have written to make inquiries about himself. The learned Counsel could only suggest that ROGER TICHBORNE was in the habit of writing and doing all manner of things rashly. But that is not what the Defendant had sworn, and I must say the learned gentleman did his client a great deal of injustice. The Defendant, when asked about it, did not treat it as a piece of idle nonsense. He swore that he was anxious to know where ARTHUR ORTON was. You see he had a purpose. He says that ARTHUR ORTON had told him that he was going home and he wanted to know if he had arrived. What is the meaning then of this explanation of the learned Counsel that the Defendant's reason was a fabrication, and that you must discard it? You cannot discard it. It is a strong fact, and it cannot be got rid of by any such suggestion. I may remind you that one of his own Witnesses, PAGE, says that the Defendant told him that he did not even know the name of Richardson, to whom he had told the schoolmaster to write the letter. It is fortunate for the ends of justice that there should be so many of these little incidents. Take another. The Defendant swears that ARTHUR ORTON was in HIGGINS'S service at the time this letter was written. Then, again, the Solicitor-General asks, "What was the importance of the missing letters to ORTON or his family?" And what is the Defendant's answer? "I decline to tell you." "Why?" "Because it might tend to criminate myself." That is obviously a shuffling excuse. Perhaps too much latitude is allowed by our law, and the plea is no doubt often made for the mere purpose of evading troublesome questions.

Mr. Justice LUSH: Are you right in saying that he said he was in HIGGINS'S employ in 1865?

Mr. HAWKINS: Yes.

The LORD CHIEF JUSTICE: I think he said he was in the same employ as ARTHUR ORTON, but not in the same establishment.

Mr. HAWKINS: Yes, my lord, one kept the billiard-room at the hotel, and the other was a butcher.

Mr. Justice LUSH: He subsequently said it was in 1866.

Mr. HAWKINS: It is impossible to reconcile the Defendant's answers with each other; and I will only say that when a man gives different accounts of the same transaction we are justified in believing that there is no truth at all in his story. But there was another difficulty. The Defendant is asked about having written to old Mr. ORTON; and he says, "I don't think I wrote to him—I only wrote to ARTHUR." There was his own letter staring him in the face; and at last he throws all the blame on the wretched schoolmaster, his amanuensis. But, with all that there is no evading the fact that, in April, 1865, the Defendant

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* "THE ORIGIN OF THE IMPOSTURE."

The late Mr. PICKERING, Q.C., furnished many Notes to Dr. KENEALY on the subject of Sir ROGER; and took great interest in both. We print the following from a mass of manuscript.

"The Prosecution seems to fail especially in one respect, viz., that it gives no reasonable or probable theory of the *origin* of this imposture, as they term it. They say the plan of the imposture was *conceived* at *Wagga-Wagga*, and of course, *began* to be put in practice there, when the *first* letter was written by the Claimant to Lady TICHBORNE; in other words, the Prosecution contends that the Claimant had resolved to pretend to be a person he had *never* seen, and of whom he had *never* heard, or been aware of his existence, (except, as they put it, from GIBBES, or the advertisement) that he had settled to deceive a Parent, of whom he knew nothing, unless it were from her letters to GIBBES (in which she appears as a most sensible woman and one *determined* to be satisfied only with the most conclusive proof of the identity of her son), and by this means to obtain a Title and a Property, to which of course he must have known a great number of persons would be prepared to offer the utmost resistance in their power. This is contrary to all our experience arising from the various impostures on record in history, and the probabilities of such a case. For instance: the false SMERDIS was *selected* for the part he played *because* of his likeness to the real SMERDIS, and he knew he would have the support of the large and powerful body of the majority to back him in his imposition.

"The false DEMETRIUS, then it is said, knew of his resemblance to the child of the real DEMETRIUS, who had been killed: at all events he must have known, before he started with his imposture, all about the real DEMETRIUS, as that child was the heir to the throne of Russia.

"Then again with PERKIN WARBECK, we all know he was instructed in everything, before he proclaimed himself to the world, by the Duchess of BURGUNDY, and his resemblance to EDWARD IV. was also known.

"Then what I mentioned to you about MARTIN GUERRE; the false MARTIN GUERRE had lived for some time with the real MARTIN GUERRE, whose resemblance to himself he knew *before* he started on his imposture, and he had wormed out of the real MARTIN GUERRE all those innermost secrets, of which he made such a marvellous use to carry out his imposition.

"But the Claimant knew nothing, when he *began* the imposition, as they term it, and it is ludicrous, as it seems to me, to say that he *afterwards* got means to carry it out, when he saw BOGLE at Sydney, and that BOGLE is a co-conspirator. It is most marvellous that with such a commencement as the Prosecution suggests it should turn out that so many people should say that he is ROGER TICHBORNE.

"The Claimant says that when he wrote his first letter to Lady TICHBORNE from Wagga-Wagga he had never seen the advertisement. From what I told you, it seems impossible he could have seen it. He refers in that letter to a letter dated 22nd April, 1854, as the last letter he had written to Lady TICHBORNE before he left Rio. The advertisement states the 'Bella' sailed from Rio on the 20th April, 1854, and no imposter would have made such a mistake, and have put an impossible date for his letter, to which he calls the attention of Lady TICHBORNE. The Claimant says he wrote and mentioned that as the date of his last letter to Lady TICHBORNE from memory; and nothing is more probable than that the date he really used at Rio should, under the circumstances, have been fixed on his mind, and that, when he wrote at Rio, he had put April 22nd, 1851, by mistake. The Claimant has always said (I speak of his cross-examination in the action) that his *last* letter to Lady TICHBORNE from Rio has never been produced. If it exists, it is very unfair in the Prosecution not to produce it.

"It is clear that Lady TICHBORNE accepted the statement that the last letter to her from ROGER had been from Rio, and dated 22nd May, 1854, for she never made any objection to that statement, while everything mentioned in that remarkable letter from Wagga-Wagga had her most serious consideration."

desired to have information as to the ORTON family. Mr. RICHARDSON replied that the ORTON family was still living at Wapping, but that old Mr. ORTON had not heard from ARTHUR since June, 1854, when he was at Hobart Town. Down to the period of the Defendant's acquaintance with Mr. GIBBES, in July, 1865, there is not a trace to be found in the language, face, habits, or occupations of the Defendant that would lead us to the belief that his name was other than CASTRO, or that the life he led was not in accordance with his station. In the autumn of 1865, however, he permitted himself to be announced by Mr. GIBBES as the long-lost ROGER TICHBORNE, and from that date his communications with Mr. GIBBES became frequent. In his earlier communications there was little beyond his bare assertion that the life of a butcher was new to him. He was an illiterate person, to whom education had been almost entirely denied, and this was clearly apparent in those little notes which he penned to GIBBES for assistance pending the correspondence with Lady TICHBORNE.* You will remember one that, when originally read, provoked a smile, and I will read it now, not for that purpose, but simply to show the style. After asking for assistance, and mentioning that he is expecting the confinement of his wife, he says:—"And believe me, I am more like a mannick than a B. of B.K. [*i.e.* Baronet of the British Kingdom], to think that I should have a child born in such a hovel." This want of education struck GIBBES as curious; and he asked for some explanation, and the Defendant said that his inability to stu y had arisen from his having been afflicted with St. Vitus's dance. Now we know that ARTHUR ORTON had St. Vitus's dance; and when Mr. GIBBES, in that memorable letter which was sent to Lady TICHBORNE, suggested that he should tell her something which was known only to themselves, he called her attention to his horse called Plenipo. Now, ROGER TICHBORNE never had a horse called Plenipo. There is not even a suggestion of the kind. But the Defendant said that he had formerly had a favourite horse called Plenipo, and that he did not know whether the horse was living or not. Says Mr. GIBBES, "I took it to be his horse, as if he were writing about an old pet." So that he mentions it to Lady TICHBORNE as a test, among other things. But as I said before, it has never been suggested that any horse called Plenipo ever belonged to ROGER, or that there was a horse of that name belonging to the family. But Mr. HODSON and the MACALISTERS told us that there was a horse called Plenipo at JOHNSON'S when ARTHUR ORTON was in JOHNSON'S service. This is one of those little things which, small as they are, speak volumes. Later on you will remember that GIBBES told us he had occasion to telegraph to Sydney, after the Defendant had left Wagga-Wagga, for replies to certain questions. Well, this was one of the telegrams—"Who was your father's agent?" What do you think was the reply? "ALLEN of Bridport." The Defendant said ALLEN, but I suggest that the real name was HALLET, of Bridport. HALLET was a butcher, and a friend of Captain JARVIS'S who used to lodge at the ORTONS', and it was to HALLET'S that young ORTON and his mother went to stay for a time before ARTHUR went to sea at all. That HALLET, the butcher, had anything whatever to do with the Tichborne estates is altogether out of the question. He also spoke to GIBBES about his father's place, the Hermitage, in Dorsetshire. Now, if in his cross-examination in the Court of Common Pleas his explanation of that had been, "Oh, I was alluding to an estate which Sir JAMES TICHBORNE had bought," there might have been some colour for the statement; but the Defendant entirely repudiates that. He says, "I did not mean any place belonging to Sir JAMES TICHBORNE."† I do not say that it was suggested to him by his acquaintance with Wapping, but we know that Hermitage-street and Hermitage-wharf are close by where old GEORGE ORTON kept his shop; and I ask you, when you find that he repudiated the idea that he meant any part of the Tichborne property, and that he cannot tell how he came to mention it to GIBBES, what you think suggested it to him. I ask you to draw your own inference. There were, before leaving Sydney, two or three other remarkable documents which in themselves marvellously indicate who and what the Defendant is. One is ignored by him and the other is solemnly deposed to by him. Need I remind you of that extraordinary Wagga-Wagga will prepared by Mr. GIBBES under the direction of the Defendant on the 7th of June, in which two of old ORTON'S most intimate friends and ARTHUR ORTON'S earliest acquaintances, JOHN LEWIS, of Bridport, and HENRY ANGELL, who had known ARTHUR from his boyhood, were appointed respectively the one executor and the other the guardian of his children? And again, the property at Hermitage is made subject to devises in the will. When he is asked about Hermitage, he repudiates all knowledge of it, and cannot account for its presence in the will. Here, again, with regard to this Wagga-Wagga will, we have the Defendant's Counsel at variance with his client. The Counsel says that the will was a piece of folly, and that the names were put in at random, and accounts for the mention of the friends of ARTHUR ORTON in ROGER TICHBORNE'S will by saying what the Defendant, when he was asked upon his oath, never even dreamt of, and until his Counsel said it, no one else ever dreamt of it. He suggested that, "under the broad canopy of heaven in the forests of Australia, he and ARTHUR ORTON sat by the camp fire, ARTHUR ORTON telling stories to him." What stories! (Loud laughter.) The Defendant's Counsel did not quite go the length of suggesting that all the falsehoods he told GIBBES to put in the will were justifiable, because they were intended to raise money; but the Defendant did so. The Defendant's Counsel says that he looks upon the Wagga-Wagga will as one of the minor points of the Case. I wonder what you think. I am glad that you are the judges of that, and not the Defendant's Counsel. You will deal with these things as your intelligence dictates, and you are not bound to adopt any extravagant suggestions like this, but to judge upon the facts themselves. There is the letter to RICHARDSON, with the statements to Mr. GIBBES, the statement about the horse Plenipo, and the Wagga-Wagga will. Ask yourselves now who suggested the names of JOHN LEWIS and HENRY ANGELL as executor and guardian of the Defendant's children. How could such a thing be a minor point in the Case? To talk of such things would be an insult to your understandings. I think the Defendant's Counsel is the only man who thinks so. You may rely upon it his client does not look upon it as a minor point in the Case. He certainly did not when he was cross-examined. I will tell you what he swore. He swore that he used those names at the suggestion of ARTHUR ORTON, who was standing outside GIBBES' office, and that he wilfully trumped-up those names, even to what he calls his mother's name. He says, in substance, that it was done with a deliberate intention to defraud.

The LORD CHIEF JUSTICE: Does he say that ARTHUR ORTON was standing outside?

Mr. HAWKINS: Yes, my lord, in his examination in chief by Mr. GIFFARD he says, "He was close by, not in the office."

The LORD CHIEF JUSTICE: I understood that it was put in this way—that ARTHUR ORTON pressed him to make this will that he might get some money.

Mr. HAWKINS: He said the names were suggested by ARTHUR ORTON, and that ARTHUR ORTON was close by—as I construed it—outside the office. You have been told by the Defendant's Counsel that you are to repudiate that statement as not worthy of truth, but as a piece of reckless swearing. Now, gentlemen, that statutory declaration which was prepared by GIBBES was solemnly deposed to by the Defendant in order to raise money. GIBBES says he prepared it, and it commenced by the Defendant describing himself as the eldest son and heir of Sir JAMES TICHBORNE; but when he came to state the name of the vessel in which ROGER TICHBORNE left England, he named the 'Jessie Miller,' the very vessel which brought ARTHUR ORTON home from Valparaiso! Who suggested the 'Jessie Miller' to him? Was that done "under the broad canopy of heaven, by the camp fires"? (Laughter.) He says the 'Jessie Miller' took ROGER TICHBORNE out, and when he professes to give the date of ROGER TICHBORNE'S leaving, what date does he give? The 28th of November, 1852, the day ORTON dropped down the river in the 'Middleton.' This is curious. Then, again, the statutory declaration; what explanation have we of it? Why this:—"What do I care about the statutory declaration." Fortunate for the Defendant would it be if you could brush it out of your minds by a sweeping statement like this—"Oh, I care nothing about it."

The LORD CHIEF JUSTICE: I think you are not quite accurate, Mr. HAWKINS. I believe the Counsel intended to convey that the intercourse between ARTHUR ORTON and the Defendant had led to this effect, viz., that ARTHUR ORTON had narrated his adventures to the Defendant, so that the latter had mistaken them for his own. (Laughter.)

Mr. HAWKINS: Then I am afraid I have done too much justice to Defendant's Counsel. I will take your lordship's explanation—take it one way or the other—and I would rather, indeed, have it that way than mine. (Laughter.) There is one other document, and one other only, that I shall have to refer to before

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* The Solicitor-General COLERIDGE and Mr. HAWKINS studiously paraded the circumstances of the Claimant begging the loan of a few pounds from Mr. GIBBES, at Wagga-Wagga, when, as they would make believe, he had only to mention his name, and his bankers would have sent him several hundred pounds at once. The Lord Chief Justice reminded Mr. HAWKINS that the bankers would not have paid the money if they supposed ROGER to be dead, especially as ROGER'S estate had been administered on the supposition that he was dead. "But the Defendant was not aware that Sir ROGER'S will had been proved," was Mr. HAWKINS'S reply. The Claimant could not, of course, know with precision, what had been done by the family, but common-sense must have told him that after the lapse of so many years, the estate would have come into other hands, and that he must prove his claim in the ordinary way; although he never could have dreamt that he had to satisfy his cousins, his uncles, and dozens of people who had no interest in the matter, that he was really the person who professed to be—ROGER TICHBORNE. As a matter of fact, it should be remembered the Claimant, after he did announce himself as ROGER, and even after he had made a will and made a statutory declaration, did not get any money from a banker. He accepted certain bills, and on these the money used was got.

† It is believed that this statement of Mr. HAWKINS is false. No such words as "I did not mean any place belonging to Sir JAMES TICHBORNE," can be found in the cross-examination. Pp. 802-3.

we take the Defendant away from Australia, and that is the extraordinary Australian pocket-book. I don't deal with the handwriting. That you will have an opportunity of dealing with hereafter, as well as of comparing it with the handwriting at FOSTER'S. In the statutory declaration is a mention of Captain OWENS as the captain of the vessel that he says picked him up and brought him to Melbourne, and that, I think, is the only place in which the name OWENS occurs. There are but two or three entries in the pocket-book which I need mention to you. Certainly the man who wrote them must have been in Melipilla, because the name occurs there. I want to know who but ARTHUR ORTON could have written there the name and address of MARY ANN LODER. And what do you think of the entry of ROGER TICHBORNE arriving at Hobart Town in 1854? These are points I need not dwell upon. In the result the Defendant accompanied by BOGLE left Australia under circumstances upon which I shall have to dwell at some length. But before parting with GIBBES and his Australian friends, the Defendant told them, having purchased the Metropolitan Hotel, that he intended, after having got the estates, to come out again and set up the largest butchering establishment in Wagga-Wagga. (Laughter.) If you had to consider whether this was most like ROGER TICHBORNE or ARTHUR ORTON which would you say? They left Sydney on board the Rakaia, and arrived at Panama. There was little to notice on the voyage, and I pass over it, as well as his stay at New York, prior to embarking on board the 'Cella' on his voyage for London. On board that vessel the Defendant met Mr. WILLIAM HENRY STEVENS, who I shall have to introduce to you directly. During the voyage Mr. STEVENS handed to the Defendant his card, and on the morning of the 25th of December, 1866, the 'Cella' arrived in the river, and off Gravesend. There they took on board a pilot named JOHN BROMLEY, and with JOHN BROMLEY the Defendant had a short but most striking and most remarkable conversation, which is as striking as anything in the course of this inquiry. BROMLEY was at his post at the head of the vessel, and the Defendant standing on the bridge. Without a word of previous conversation, as if a sudden thought had struck him, the Defendant came down the steps and made his way to the spot where BROMLEY was standing, and asked him this question, "Do you know a pilot of the name of FURGUSSEN, who was pilot of the Dundee boats?" And said BROMLEY, "I knew him, his name was JOHN FURGUSSEN;" and the Defendant remarked, "Yes, that is the name—JOHN FURGUSSEN." The JOHN FURGUSSEN of whom they were speaking, in ARTHUR ORTON'S time kept a public-house in Wapping, and he it was who during that time had acted as pilot on the Dundee boat which brought THOMAS ORTON'S Shetland ponies up to the wharf, at the corner of which stood Mr. ORTON'S East Smithfield shop. JOHN FURGUSSEN had long since been dead, and on board that vessel nothing occurred which could give rise to the mention of the name. I ask you, what but the memory of the man and of his occupation could have made the Defendant make these inquiries of BROMLEY after JOHN FURGUSSEN, the pilot of the Dundee boats? Has any explanation been offered to you of this? How is it met? Why, you are asked, upon absolutely no foundation, to distrust the evidence of JOHN BROMLEY, who I say is as honest a man for his station in life as ever followed that calling. Do you believe JOHN BROMLEY to be a perjurer? If you do there is an end of it, but if you do not, as I believe you do not, what inference can you draw from this short question put to him by the Defendant? Draw your own conclusion from this remarkable and striking, though very short, conversation. Gentlemen, whatever importance you may attach to that little conversation—need I say what importance I attach—what equal importance will attach to that part of the Defendant's history to which I now come, viz., that visit of the Defendant on the night of the same day to the 'Globe' public-house in Wapping? Will you recall to your minds the evidence of Mr. FAIRHEAD and Mr. JACKSON on that subject? Alone, and I say disguised in a rough coat, with a muffler round his neck and an engineer's cap with a large peak, the Defendant within two or three hours of his arrival in England entered that house. He had landed at the Victoria Docks, and had gone to the west-end of London to FORD'S Hotel, in Manchester-square, whither the secretary BUTT had been directed by old BOGLE. There must have been some very pressing necessity for that visit to make the Defendant leave Manchester-square and travel so far eastwards that evening. Well, he arrives at Wapping, and he goes into the Globe, and he commenced his conversation by asking—as he did by RICHARDSON'S letter—for some information as to the ORTON family. He stated that he had already been to ORTON'S old shop, but that he found it was closed. He was told at the 'Globe' that both old Mr. and Mrs. ORTON were dead. He replied that he had heard Mrs. ORTON was dead, but he was not aware of the death of Mr. ORTON. He next expressed a desire to see MARY ANN ORTON. Will you for a moment recall to your minds a little bit of evidence given by Mrs. MINA JURY, who said that ARTHUR told her in Hobart Town that he had received a letter from MARY ANN asking him to go home and not to travel any more? MARY ANN seems to have been his favourite sister. Well, he was told that she kept a lodging-house in the East India-road, and Mrs. FAIRHEAD offered to procure her address from CHARLES ORTON. But he said that he did not want him. Will you allow me to pause for a moment, and ask why, if he wanted any information about the ORTON family, he would not see CHARLES ORTON? He lived close by in Hermitage-street; but he would not see him, and so the matter ended by Mrs. FAIRHEAD promising to get the address from an old servant who lived in the neighbourhood. During that visit occurred this remarkable circumstance, that completely showed that the Defendant was no stranger to the place. He left the bar, and, unattended and unguided, walked through the old passage to the back of the house, and thence up the steps leading to the parlour, with the air and readiness of a man conversant with the house, and on his return to the bar he said, "The old place has not altered a bit." In subsequent conversation, he said that he remembered, in years gone by, that Mrs. M'FARLANE was the landlady of the house. Was this the conduct of a mere casual stranger? It seems to me that no human being can help thinking that it was the act of a man who well knew the place. He commenced a chat with the two women about the old friends of ARTHUR ORTON. He went to the window which commanded a view of the shop in which the CRONINS had lived, but from which they had disappeared and left no trace behind, and asked if the CRONINS lived there still. There was nothing to suggest JOHN WARWICK'S name, but he asked if JOHN WARWICK still kept the butcher's shop. They told him he was dead, but that the business was carried on by one of his daughters, and on that he said, "Is that the stout one—CHARLOTTE?" Then he asked about the SCHOTTLER'S, in the Nook, and who kept "WRIGHT'S public-house?" No wonder that these enquiries astonished Mrs. JACKSON and Mrs. FAIRHEAD, and made them look very inquisitively at their questioner, until they recognised in the Defendant a striking likeness to the members of the ORTON family; and Mrs. FAIRHEAD could not resist making this observation, "Why, you are the ORTON who went away some twelve or fourteen years ago." You could hardly expect him to admit that. He replied, "No, I am not, but I am a friend of his who has come back to assist the family." "But," says Mrs. FAIRHEAD, "you seem to know the Wapping people very well." "Oh," he says, "I have been in Wapping twelve or fourteen years ago"—an unfortunate and imprudent statement for him to make. Fourteen years previously, within a month, ARTHUR ORTON had left Wapping. In November, 1852, he went away. Gentlemen, you will not fail to mark that during that visit the name of Miss LODER was not mentioned, and you may wonder why that was. She lived within a stone's throw of the house, in a house which overlooked the bullock-yard of old ORTON. I wonder whether the same reason that made him dislike the name of CHARLES ORTON caused him not to wish to see Miss LODER. She would have been a very dangerous person to encounter face to face. Mrs. FAIRHEAD, as she had promised, obtained for him Mrs. TREDGETT'S address, and he departed, and they did not see him again. The next morning the Defendant seems to have presented himself at Mrs. TREDGETT'S house. Mrs. TREDGETT was out, and JANE MOORE, a neighbour's daughter, took him to Mrs. PARDON'S, a married sister of Mrs. TREDGETT. To Mrs. PARDON the Defendant sent in the card which Mr. STEVENS had presented to him, to which he had added the word Australia. There could have been but one motive for adding Australia to that card. It could not be an innocent motive. It must have been done for the purpose of deception. STEVENS had no connection with Australia, and why add Australia to his card? I will tell you why. Having got STEVENS'S card he determined to assume STEVENS'S name, and to pretend to Mrs. PARDON that he was STEVENS. He told her that he had come from Australia to report upon the Fenian trials. Having left ARTHUR ORTON there, there could be no other motive. I say that for fraud, and for fraud only, that name was added. Well, he saw Mrs. PARDON, and stated that he knew ARTHUR ORTON in Australia, and that he was one of the wealthiest men out there.

A JUROR: Was STEVENS'S card written or printed?

Mr. HAWKINS: Written, I believe. He said that he had promised ORTON to make inquiries about MARY ANN, and that if she needed assistance he was prepared to assist her. As Mrs. FAIRHEAD and Mrs. JACKSON did Mrs. PARDON did. She looked at him, and told him he very much resembled the ORTONS, and intimated that he was very likely to be ARTHUR ORTON. He said, "No, but I am a great friend of ARTHUR ORTON." He showed her a locket with a portrait of a lady and child, and said it was a portrait of ARTHUR ORTON'S wife and child. He also handed a letter addressed to his sister MARY ANN, 69, High-street, Wapping, and charged Mrs. PARDON to deliver the letter. He said he was going to Ireland as a Fenian reporter, and left an address for her to forward Mrs. TREDGETT'S letter to, if she should not succeed in delivering it. In the afternoon Mrs. TREDGETT called, and Mrs. PARDON described the appearance of the man who had called. In Mrs. PARDON'S presence Mrs. TREDGETT opened the letter, exclaiming, "Oh, Mrs. PARDON, that must be my brother's handwriting!" About this handwriting there is no doubt. It is not denied by the Defendant. He swears that he had received a letter of introduction from ARTHUR ORTON to his sisters, and that he knew the contents of the letter. That must be a deliberate falsehood, because this letter bears within itself most irresistible proof that it was written after the 'Cella' had left New York, as STEVENS'S name was in it, and I think I shall show you that it was written between the time of his leaving the 'Globe' and his seeing Mrs. PARDON.

Mr. Hawkins then read the letter, which appears in Vol. I., page 298.

"Wagga-Wagga, N.S.W., June 3, 1866.

"My Dear and Beloved Sister,—It is many years since I heard from any of you——"

So it was. Arthur Orton had not known of them, nor they of him.

"I have never heard a word from anyone I knew since 1854, but my friend Stevens is about starting for England, and he has promised to find you all out, and write and let me know all about you. I do not intend to say much, because he can tell you all about me. Hoping, my dear sister, you will make him welcome, as he is a dear friend of mine; so good-bye."

Then follows the signature of Arthur Orton, with the peculiar hieroglyphic attached to so many of his letters. If you look over the letters you will find often repeated the sentence: "So good-bye."

The Foreman: Has that hieroglyphic been explained?

Mr. Hawkins: No. I never offered any evidence upon it. I have had hosts of anonymous letters on the subject.

The Lord Chief Justice: So have I. The post-office must have made quite a revenue out of the anonymous letters we have received. (Laughter.)

Mr. Hawkins: I don't know how many I have received. Gentlemen, you shall hear what the Defendant himself said—I will not say about that particular letter, because it was not produced during the cross-examination. It was in the possession of Mr. Holmes, and it was not until after the close of the Solicitor-General's speech that Mr. Holmes was called upon to produce all letters signed Arthur Orton, and he produced that one. I call your attention to the Defendant's cross-examination, page 1336, where he said he had promised Arthur Orton to make inquiries.

"From whom were you to make inquiries?—From his sisters. He gave me a letter of introduction.

"To whom?—To one of his sisters."

And then again——

"Did you know what was in the letter?—Yes, I knew what was in the letter."

Gentlemen, it is curious, perhaps more curious than important; but just let us pause for a moment to inquire, if we can, when that letter was written. It was signed Arthur Orton, and had that hieroglyphic by which Arthur Orton was best known. When was it written? It is absolutely beyond the possibility of a doubt that it was written after the 'Cella' left New York, because until the 'Cella' left New York Stevens was never known. I cannot call before you the person who wrote it, but that he did write it is beyond all question. His own Counsel says he did. I wonder whether—having gone down to the 'Globe' and seen Mrs. Jackson and Mrs. Fairhead, and finding, notwithstanding his disguise and his increased size, that they recognised him as Arthur Orton, and taxed him with it—I wonder whether it occurred to him, "Why, these people at the 'Globe' recognise me; if I go and make further inquiries of Mary Ann—because I must make inquiries, and must give some account of Arthur Orton—would it not be better if I penned this letter, and date it back to Wagga-Wagga in the month of June, so that when they receive that letter they will say, 'This can't be Arthur Orton; he is in Wagga-Wagga'?" That is the reason why it was written, and it strikes me in this way. He never said to Mrs. Fairhead, "Would you be so good as to give this letter to Mrs. Tredgett?" On the night he was at the 'Globe' he wanted Mary Ann's address, but when they said, "You must be Orton," he said to himself that it would not do for him to present himself without showing that Arthur Orton was away. So I suggest that he went away and penned a letter, so that Mrs. Tredgett might see it was dated from Wagga-Wagga on the 3rd of June, thus showing that whatever similarity there might be between him and Orton, he could not be Orton, because Orton had been left behind in Wagga-Wagga. We know the letter was fraudulent and false, that it was not written in Wagga-Wagga, and that in it a deliberate falsehood was stated by that "My friend Stevens will deliver it." You must draw your own inference from the letter itself. You remember he left Mrs. Pardon promising to send an address to which letters might be returned if she failed in finding Mrs. Tredgett, and on the morning of the 27th December there came this letter. (Mr. Hawkins read an extract from the letter, which appeared in Vol. I., p. 297.) Gentlemen, I cannot tell you exactly when it was, but after the date of this letter it is beyond all question that there were communications between the Defendant, Mrs. Tredgett, and Mrs. Jury. It is beyond all question, too, that the result of their communications had led them to believe that the Defendant was their brother. He had given them the letter to show that Arthur Orton was at Wagga-Wagga, and for the same purpose he gave them the portraits of Arthur Orton's wife and child. That communication had taken place between him and the sisters is beyond all question, and before the 7th of January, because on the 7th of January this letter comes to Mrs. Mary Ann Tredgett, signed in the name of Stevens:

"I received your kind letter this morning, and very sorry to think you should so mistaken as to think I am your brother. Your brother is a very great friend of mine, whom I regard as a brother, and I have likewise promised to send him all the information about his family I can. I cannot call on you at present, but I will do so. I send your sister a likeness of your brother's wife and child. I have likewise one of myself, which I will send when I get some copies."

His further address will be R. C. T., Post-office, Liverpool. He has sent the portrait of Arthur Orton's wife and child—his own wife and child—but now he is going to send them the portrait of Arthur Orton himself, and that was, no doubt, intended to be one of his own—probably to be taken in Regent-street—to show them that Arthur Orton had sent over by Stevens another little souvenir from Wagga-Wagga. Of course if he was to send them a portrait of Arthur Orton, he must send them a portrait which they could recognise, and if he were Arthur Orton they would know that the portrait represented their brother, whom they would believe had been left behind by Stevens in Australia. All this was cleverly—well, not cleverly, but cunningly—done; but not so cunningly done but that little clumsinesses and follies peep out which will enable us to identify this man with Arthur Orton bit by bit, till the case becomes as clear as the sun at noon-day. Gentlemen, I do not know how soon after the writing of the letter dated the 7th of January it was that the Defendant made the acquaintance of the Orton sisters. He said in that letter, "Hoping to have the pleasure of making your acquaintance soon." Well, if he is the person he represents himself to be, and he comes over for the purpose of doing good to Arthur Orton's sisters, why delay the pleasure of making their acquaintance until April, 1868, which he has sworn to on oath? And there is an affidavit of the Defendant's in which I was going to say you may read the fraudulent language which is used for the purpose of disguising what he has been about at this time. He is asked in cross-examination—"Why did you tell them to send a letter to R. C. T., Liverpool?" There is no explanation. There are suggestions; but at last we get a reply, in the truth of which I implicitly believe. He said, "I told them to direct to the Post-office, Liverpool, because I did not want to be bothered any further with them." Why, if he had come over for the purpose of doing them good, did he want not to be bothered with them before even having seen them? If the Defendant was Roger Tichborne, as he says he is, there would be no necessity for avoiding Arthur Orton's sisters. The very first thing the man would say would be, "They would like to see me and to hear from me about the nights I passed with their brother in the Australian forests, under the broad canopy of the heavens. When sitting beside the camp fires, he told me about Furgussen and the Schottlers, the Cronins and Mrs. M'Farlane, and we will have a long chat about it." (Loud laughter.) This is exactly what a goodhearted man would have done, but why did he not see them? If my theory be correct that he was afraid if he did see them that they would say, "Why, you are Arthur Orton," I can thoroughly understand it. Well, they had made a valuable discovery, these sisters, and they were not to be so easily got rid of. If he was Arthur Orton his quieting his own family was important. Their silence was absolutely necessary and essential to his scheme. They knew it, and he knew it. Their silence must be bought. The Defendant has sworn that he never saw them until the year 1868; but certain it is that before that he was in constant communication with them; because in the year 1867, before they made their affidavits to which he referred in some of his, he supplied Mrs. Tredgett with £5 notes. His own words are—"Whenever they wrote and wanted any and were in distress I used to send them some money." And many letters passed between them, which, on the authority of the Defendant, have been all destroyed. I want to know if that was honest—if they were merely charitable gifts from Stevens, a friend of Arthur Orton's, how it was that, living in London, within half an hour's drive from Wapping, he never saw the recipients of his bounty? But it is not alone these sisters. There is Charles Orton—the man he did not want to see at Christmas, 1866, but who then kept a shop in Hermitage-street. We are not told the reason—we may easily imagine that—but Charles Orton left the neighbourhood of Wapping, and left his name behind him. He went into the neighbourhood of Bermondsey, and took the name of Brand. He, too, has made a statement, but before he did so he, too, was supplied on many occasions with £5 notes by the Defendant, who corresponded with him. Here again the correspondence was destroyed. There is, however, one letter from Brand to Lady Tichborne—that is, the wife of the Defendant. It is dated from Mark's-road, Peckham. He says, "I have taken the liberty of writing to you to ask if Sir R. C. D. Tichborne left any letter or message for a party named Brand before he went away—[this was the journey he took with the Chili Commission]—and if so I should be obliged if you forward to me at this address." On this letter being read, the Defendant is asked, "Did you make him any allowance?" and he replies, "Yes; £5 a month." It was very fortunate for the ends of justice that the Defendant forgot to leave those £5 notes when he went to Chili; for on the 13th October, 1868, Holmes writes to Rous that Charles Orton, alias Brand, has made an affidavit "that Sir Roger is his brother," and that he did so at the

request of WHICHER and Lord ARUNDEL.* It is quite evident that when this letter was written they were in a state of great consternation. Miss BRAINE said that HOLMES was in a state of great anxiety, for CHARLES ORTON had said that his brother had been in Valparaiso, and HOLMES said that "when he had got to Chili he did hope he would be in fresh ground." Gentlemen, do you believe this testimony? If you believe Mrs. PARDON, if you believe the evidence of BROMLEY, of Mrs. FAIRHEAD, of Mrs. JACKSON, and others in the same category, is true—I ask you if the Case stood on these few facts alone, would there not be an overwhelming case against the Defendant? What explanation upon this part of the Case has the Defendant's Counsel offered? I have called your attention to what he has said about BROMLEY. BROMLEY is a perjurer. He does not deny the fact of the visit to Wapping. He cannot. He does not deny that the Defendant went to the 'Globe' public-house on that afternoon to inquire about the ORTON family; but what he says is that Mrs. JACKSON and Mrs. FAIRHEAD are perjured; that they have invented the rest of their tale; and that they have invented it under the influence of Mr. WHICHER—a wicked, foul, and unfounded aspersion upon the characters of two respectable women as any living in their class of life. Is it a fair way, I ask, to deal with Witnesses who really come here to speak the honest truth to the best of their ability, and whose characters will bear investigation? You may depend upon it that Mr. WHALLEY and Mr. ONSLOW and the rest of the persons whose names we have heard of, by whom the Defendant has been surrounded, have raked every quarter of the globe where they thought they could get information to damage the character of individuals coming forward to speak against the Defendant. They have nothing to impeach the character or the testimony of those two Witnesses; and yet simply because these two women gave evidence upon these matters which seem to me strongly to corroborate the other circumstances of the case, having told the honest truth, they are to be branded as two wicked perjurers and conspirators, who have invented all the important parts of the story they have come forward to tell. Let me now call your attention to what seems to me to be another unblushing piece of audacity on the part of the Defendant. First of all with reference to Mr. STEVENS. Is there any necessity at all to drag Mr. STEVENS in and impute to him that he is a wicked conspirator, for the purpose of crushing this man? Hear what the Defendant's Counsel dares to say of Mr. STEVENS, who having had the misfortune to meet accidentally with this man on board the 'Cella,' a man pretending he was Sir ROGER TICHBORNE, handed to him his card, and he fraudulently puts Australia to it, pretending that STEVENS came from Australia. "Is there," he asks you, "any doubt that STEVENS and JONES were spies sent home in that same ship with him, and that STEVENS by some inscrutable means induced him to take his card, assume his name, and write a letter in his name?" Now, I ask you, gentlemen, if it is not infamous so to asperse the character of a man, against whom there is not one single particle of reason for suggesting that he is not as honest and trustworthy as any man in this court. When we come to look at the explanation with reference to his going to the 'Globe' public-house, it is rather amusing. It is said, you know, that the greater part of the conversation is an invention. They cannot get rid of the actual fact. How is this explained? Here, again, we have the Defendant's counsel absolutely at variance with his own Client's oath. It is constantly, as my friend reminds me, occurring; but here we had it glaringly in the teeth of his own Client's oath. His own Client says, upon his oath, that that visit to Wapping was to make inquiry after ARTHUR ORTON, to see whether he had arrived. His Counsel characterises it as "another of those mad, reckless acts which he is always committing." "It is impossible," exclaims his Counsel, "to account for it: everything is madness; don't mind my Client's actions where they tell against him." Let us see what he suggests. "Are you sure," said the Defendant's Counsel to you, gentlemen, "that ARTHUR ORTON did not know what ROGER TICHBORNE was going home to England for? Are you sure he had no hold on ROGER TICHBORNE from which this man could never escape? Are you sure he was not cognisant of the follies, vices, and crimes even that ROGER TICHBORNE had taken a part in?"—and so on. And then this is the language supposed to be addressed by ARTHUR ORTON to ROGER TICHBORNE—"You are going home to recover possession of vast estates. Here am I, vagabond and wanderer, bound down to a certain course of life, from which I cannot escape. I have abjured my family for years, but I still have a little human nature left, and I wish to see them provided for. If you wish to go home and take your place among the gentlemen of Hampshire—well, you may go—(laughter)—but you know what you and I have done together, and I will have my pay and hush money from you, and unless you are prepared to have the whole of your life shown up to the public you must take care of my family. Go home, and see my family; go down to Wapping, and go to the old 'Globe,' and ask for the SCHOTTLERS and old Mrs. M'FARLANE, and tell Mrs. FAIRHEAD, the landlady, that the old house is not altered a bit—(laughter)—and if you should chance to meet anybody who can give you information on the subject, don't forget to ask all you can collect about JOHN FURGUSSEN, the pilot." (Much laughter.) Well, gentlemen, I pass from this visit to Wapping; but touching this visit to Wapping, the correspondence with ORTON'S sisters and with BRAND, and these five-pound notes with which you find they are supplied, the Defendant remains as silent as the grave. Even HOLMES and ROUS, so trusted by him, were kept in the dark about this visit to Wapping. It was months before those who were defending the infant possessor of the estates against the assault made upon his title obtained a clue as to who and what this mysterious Claimant was. At last the day dawned, and a little ray of light was shed upon his history, and by the time the month of October, 1867, had arrived, it was openly asserted as a fact and as the result of the inquiries which had been made that the Claimant, or now Defendant, was no other than ARTHUR ORTON; that his birthplace was Wapping; and that Mrs. TREDGETT and Mrs. JURY were his sisters. What do you think a man honestly coming to claim what he knew to be his own would have done when it was openly and boldly asserted that he was nothing more than ARTHUR ORTON, the son

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* STATEMENTS OF CHARLES ORTON IN 1868.

I, CHARLES ORTON, of No. 1, Melon-ground, Peckham (Martin-road, Rye-lane), by trade a butcher, say: I am one of the sons of the late GEORGE ORTON, of High-street, Wapping, butcher. One of my brothers was named ARTHUR ORTON. Mrs. TREDGETT and Mrs. JURY, of Anne's-road, Hackney, are my sisters. During the year 1867 I heard that it was said my brother ARTHUR had come to England, and was claiming to be Sir ROGER TICHBORNE. I went to Croydon about August, 1867, and saw a stout gentleman come out of Wellesley Villas, who was said to be Sir ROGER. I looked well at him, and saw that he was not my brother ARTHUR, nor any relation of mine.

I was at one time in partnership with HENRY WOODGATE, now employed in King-street, Tower-hill. He told me last Tuesday that Inspector WHICHER had been several times to see him, to ask for my address, and that on Thursday or Friday in the week before last, WHICHER told him to tell me that Sir ROGER was my brother ARTHUR, and they had proof enough to convict him—thirty or forty Witnesses, including his school-fellows and others—but that, as I was a poor man, £200 or £300 would be given me to swear that Sir ROGER was ARTHUR, and they would not stand nice about £50.

On the 30th May, 1868, I called upon Mr. HOLMES, 34, Clement's-lane, and told him the above. He showed me a likeness of the stout gentleman I saw at Croydon, which I signed in pencil: "It is not the likeness of my brother, or of any relation."

(Signed) CHARLES ORTON.

May 30th, 1868.

I, CHARLES ORTON, of No. 1, Melon-ground, Peckham, Surrey, say: I am a son of the late GEORGE ORTON, of High-street, Wapping. One of my brothers was named ARTHUR. He went to sea about sixteen years ago. I last heard of his being at Freemantle. Having heard it said that a gentleman named Sir ROGER CHARLES DOUGHTY TICHBORNE, who had come from Australia last year, was, in fact, my said brother ARTHUR, who had returned, and was claiming the TICHBORNE and DOUGHTY estates, I met the said gentleman by appointment this 3rd day of July, 1868, at the office of Mr. JOHN HOLMES, 34, Clement's-lane, London. I solemnly declare that the said Sir ROGER CHARLES DOUGHTY TICHBORNE is not my brother ARTHUR, nor any relation whatever of mine, and I have never, up to the said meeting, seen the said Sir ROGER TICHBORNE previously. I last heard that my brother EDMUND was in Mexico about six years back. He is a dark man. My brother GEORGE is living in Singapore. At my said interview with the said Sir ROGER CHARLES DOUGHTY TICHBORNE, Baronet, there was present Captain HENRY ANGELL, of the ship 'Glen Osmond,' who well knew my brother ARTHUR, and the said Captain told me and the said Mr. HOLMES and Colonel LUSHINGTON, who were also present, that he could not recognize the said Sir ROGER CHARLES DOUGHTY TICHBORNE as ARTHUR ORTON, and that he was a different man to the one he expected to meet.

CHARLES ORTON.

Mrs. ELIZABETH JURY, Mrs. MARGARET JURY, Mrs. MARY ANNE TREDGETT (ARTHUR ORTON'S three sisters), have all deposed to the fact that the Claimant is not their brother (See the INTRODUCTION, pages 47-49). Captain GEORGE ORTON also made the same statement in the following letter:—

LETTER FROM GEORGE ORTON TO HIS SISTER.

"Singapore, April 27th, 1869.

"MY DEAR SISTER,—I have returned the carte-de visite.

"I cannot see any likeness of my Brother ARTHUR in it.

"ARTHUR *had his name marked on his arms*, and likewise holes in his ears. If you can remember, he *used to wear gold earrings in his ears;* but it is not ARTHUR, and not the least like him. But surely, my dear sister, if you see him and speak to him you ought to know if it is ARTHUR, and I cannot see anything like him in the likeness.

"Give my love to GEORGE and the children, and self,

"And remain your affectionate brother,

"GEORGE ORTON.

"ADELAIDE sends her love to all."

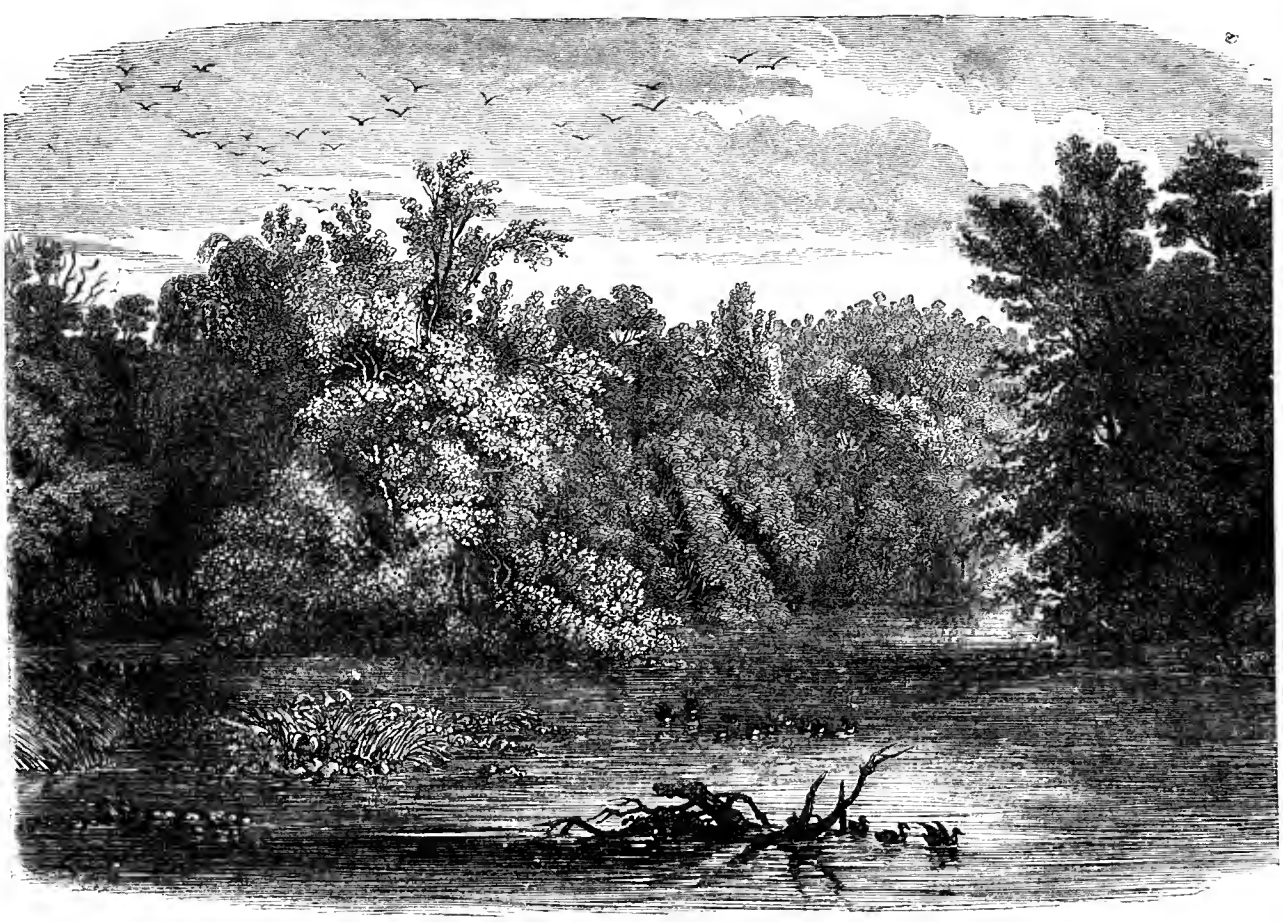
A copy of the carte de visite referred to in the above letter appears in the *Trial*, Vol. I., page 317.

of GEORGE and MARY ORTON, of Wapping? Would he have lost one moment in going down to Wapping and saying, "Let me meet face to face those who know the ORTON family best and who say I am ARTHUR ORTON, and I will satisfy you that this is absolutely untrue—that when they come to examine my face and ask me particulars about my life, and put questions to me, I shall be able to satisfy everybody with whom I am confronted that I am not the man they think I am." Gentlemen, that is not the way in which the Defendant met that charge. I will read to you how he met it. In a letter to his friend ROUS, dated the 20th October, 1867, which was the month in which the discovery was made, he said, "I find the other side very busy" —it is true they were busy—"with another pair of sisters for me. One of them has been to see Mr. HOLMES. They have been three days at them, and they are quite sure of success." This is the man writing to ROUS about two women to whom he had been paying £5 whenever they chose to ask for it since the beginning of that year 1867.

The LORD CHIEF JUSTICE: I was under the impression that it was not until later than that; that it was not until 1868, when the ORTON theory had been started, that he put himself in communication with the sisters.

Mr. HAWKINS: I will see if I can find the date and give it to your lordship after the adjournment. Gentlemen, it would in one view be inconsistent with the observations I was making, viz., that at that time he was paying them money, but in another view it would be important—perhaps it would make it infinitely more strong as against the Defendant if these payments were commenced when it was known what these sisters could say. At all events, I am right in this observation, that one of these "pair of sisters" had, as early as January, 1867, said she thought he was her brother ARTHUR. In his letter to ROUS he says, "There is only this difference which they cannot make out. The brother of these young womans is dark, and very much marked with the small-pox—very much about the face; but they are still very sure I am him. I wonder who I am to be next. The man they think I am is still living at Wagga-Wagga under an assumed name. I suppose this accounts for the independents

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 59.—FOREST SCENE IN SOUTH AMERICA.

of GEORGE GREENWOOD. They say I was born in Wapping. I am glad they found a respectable part of London for me. I never remember having been there, but Mr. HOLMES tell me it is a very respectable part of London." (Laughter.) So it is. (Laughter.) The letter concludes with, "Mama has just come, so I must now say goodbye." The only comment I make upon that letter is, that I don't understand, if there was nothing to conceal about that visit to Wapping, why in writing to ROUS he should say he never went to Wapping in the whole course of his life. That is his observation, and I give it to you for what it is worth. Now, gentlemen, Lady TICHBORNE, as far as we can make out, was kept in absolute ignorance of this Wapping visit and these ORTON allegations until early in 1868, within a month or two of her death. Of course, I have no right to speculate what that poor lady would have said if she had been assured that this man, who said he was her long-lost son, the moment he arrived in England went down to Wapping, and that he there met with people who recognized him as one of the ORTON family. I wonder—if anything would have had an influence upon her mind —what that would have had. Of course, we cannot speculate. She did not live long enough to know what we know. The first intimation which Lady TICHBORNE receives on the subject is contained in the letter dated the 19th February, 1868, in which the Defendant says, "It appears the other side are trying to make out I am not myself, but a person named HORTON." For some reason or other, gentlemen, the name is misspelt. This, and a few other details, are all that he tells to Lady TICHBORNE.

[The Court adjourned for luncheon.]

On its re-assembling,

Mr. HAWKINS continued: With reference to the dates, my lord, I find, as far as CHARLES ORTON was concerned, the date is fixed, as near as it can be, in July, 1867. Then as regards the sisters I do not find at present anything which indicates the period when their payments commenced, except it was before the affidavits.

The LORD CHIEF JUSTICE: The affidavits were in June, 1868.

Mr. HAWKINS: Yes, my lord. As regards CHARLES ORTON, the question put to the Defendant on his re-examination was this,

"Was it about July, 1867, you began to pay him?" "That would probably be the date," is the answer. I will not profess to say I have actually seen the date of 1867 for the sisters, and it is more than likely I have adopted the date given with respect to CHARLES ORTON. The date of the Defendant's first interview with ORTON'S sisters probably would be the 17th April, 1868, because I find in a letter written by the Defendant to ROUS, dated the 18th April, 1868, he says, "I was at Hackney seeing ORTON'S two sisters yesterday." There is an affidavit of June 16, filed by the Defendant in the Court of Probate, to which your attention ought to be called. A more audacious piece of swearing one rarely hears; and the Defendant evidently at this period was ignorant of the importance that might be given to certain dates. In that affidavit there occurs this paragraph:

"I knew the said ARTHUR ORTON very well indeed in Gippesland about 1855, and again in Wagga-Wagga in 1865. I did not know any of his family until this present year, 1868, when, in consequence of the reports which reached me, I called upon his sisters, Mrs. TREDGETT and Mrs. JURY, whom I then saw for the first time. They both made an affidavit, which is filed in my Chancery suits, stating that I am not their brother ARTHUR nor any relation of theirs, and that they last heard from ARTHUR by a letter from him dated about August last, from Freemantle, in Western Australia."

What do you think of that affidavit? Is there any human being in the wide world reading this who would imagine that the Defendant had been in communication—certainly by letter—with the sisters, and, by giving money, with the brother, since July, 1867? Was not the affidavit framed to induce people to believe that the idea that he was an ORTON was suddenly sprung upon him, and that so soon as he learned that report he had gone to see the people for the purpose of getting their denial of his identity with ARTHUR ORTON? Was it not framed with a view of sedulously keeping back the fact that there had been communication of any sort or kind with any member of the ORTON family during the year 1867, from the earliest part of which year, we know now upon the strongest and most conclusive testimony, the Defendant was in actual communication with them? If there is a syllable of truth in this affidavit, why have we not had the letter of August 13th, and why were not the sisters called? What do you think of the mode in which the name of JOHN WYATT CATOR has been introduced? It is scandalously and wickedly put forward in this affidavit for the purpose of inducing those before whom the affidavit came to come to an incorrect conclusion. What did it concern the Defendant? What cared he what he wrote or swore? I quote his own words from a letter of the 18th February, 1868: "I received a letter from FRANCIS BAIGENT. He still goes on about my not telling him this and that about the people of Winchester being frightened—as if it mattered to me. If they are such fools as to be gulled by a parcel of lies, why let them." These are the sentiments of the Defendant; and I can only hope that you will not be so gulled. I desire now to introduce to your notice another striking head of evidence derived from the oaths of the Defendant. You remember the statutory declaration and the statement of the Defendant that he left England in November, 1852, and you have heard that ARTHUR ORTON came from Hobart Town in the 'Jessie Miller.' Let me remind you that on board the 'Middleton,' which took ARTHUR ORTON out to Hobart Town, he had with him two shipmates whose names, to my mind, are fatal to him—I mean JAMES PEEBLES and OWEN DAVID LEWIS. Early in the year 1867, so soon as it became publicly announced that the Defendant was in England asserting himself to be ROGER TICHBORNE, you can imagine that most anxious inquiries were made by the owners of the 'Bella' to get information from the man who was so saved—and if there were people saved, what were their names? This inquiry was made of Mr. HOPKINS, with whom the Defendant had gone down to stay: and Mr. HOPKINS writes, in answer to the inquiry of the owners of the 'Bella,' a letter to which I beg to call your attention. There is no question that this letter was written at the dictation of the Defendant. It is addressed from Alresford to Mr. W. KILLEY. (See Vol. II., page 399.) I have introduced this simply for the purpose of showing that amongst the names was that of PEEBLES, and you know that there was a man named PEEBLES on board the 'Middleton' when ARTHUR ORTON was there. There was no pretence for saying that that name was to be found in the 'Bella's' crew list; * nor is there any pretence for saying that except on board the 'Middleton,' when ARTHUR ORTON was there, there was any sailor of that name to be found. The Defendant has sworn, however, that OWEN LEWIS, or LEWIS OWEN was there, and there is no suggestion that any such name is to be found upon any list of seamen except the OWEN DAVID LEWIS who sailed on board the 'Middleton' with ARTHUR ORTON—a very remarkable circumstance. Who but ARTHUR ORTON could have suggested to Mr. HOPKINS those names; or where does the Defendant give any explanation of that? I pass on to a concluding observation on that part of the case. If you take the statutory declarations, if you take the letters of Mr. HOPKINS, dictated by the Defendant, and if you take the Defendant's own statement in his affidavit, you find him adopting ARTHUR ORTON'S ship the 'Jessie Miller' the date of ARTHUR ORTON'S leaving home, and the date of ARTHUR ORTON'S arrival at Hobart Town. I now come to another matter which seems to me to deserve your undivided attention. In his affidavit and in his cross-examination before Mr. ROUPELL the Defendant has mentioned his residence in Melipilla, and stated that among the friends whom he made there was a DON TOMAS CASTRO, and that he assumed his name in Australia. With such information before them it was a matter of course that inquiries should be made by those who had to defend the title of the infant possessor of the estate, first in Australia, where this man unquestionably lived for thirteen years, and secondly at Melipilla. The Defendant knew, if he be ARTHUR ORTON, that there lived at Melipilla those who could tell all about his visit to that place when he was a sailor lad of 16 or 17 years of age, that is, from 1849 to 1851. He knew, moreover, if he be ARTHUR ORTON, that there as a lad he bore the name of ARTHUR ORTON, and no other. There was but one thing to be done, and that one thing he boldly did. He wrote on the 28th of August, 1867, to Don TOMAS CASTRO a letter in which he named old friends and circumstances, and recalled to the recollection of Don TOMAS such incidents as he thought would readily identify him in the memory of those whom he had known there. In that letter he spoke of his residence in Australia after he was at Melipilla, and explained how he assumed there the name of his old friend. Probably that letter was written with the view of inducing his old Melipilla friend, who would learn the fact of the writer's residence at Melipilla from the incidents referred to, to adopt his new name of ROGER TICHBORNE, by which he signed the letter, and in the hope that they would altogether forget and ignore the name by which he had gone there. Gentlemen, I gave you yesterday the names of many of those whose acquaintance he made at Melipilla. It was just possible that by this course the name of ARTHUR ORTON might be altogether obliterated and stifled. The following is the letter. It was written at HOLMES' office, but was signed by the Defendant. [Mr. HAWKINS read a portion of the letter which appears in Vol. III. page 31.] It is impossible he could have cemented such close friendships in the short space of twelve or fourteen days, which the Defendant has sworn was the extent of his visit to Melipilla, particularly when we remember that all these people spoke Spanish and Spanish only; * and that the Defendant deposed on his oath that at that the time he was there he did not know a word of Spanish. He then goes on (conclusion of letter read). He says here, you will observe, that during his 13 years' residence in Australia he was known there only by the name of THOMAS CASTRO. You remember that it was May, 1853, that ARTHUR ORTON arrived in Hobart Town and that he left Australia in the middle of 1866, and that just makes out the 13 years. At the time of the arrival of this letter in Chili, Don TOMAS was not in a position to attend to business, and it came into the possession of Don PEDRO, his son. Dona HAYLEY tells us that Don PEDRO brought the letter to her, and that she told him to reply to it, and give the Defendant the details of what was transpiring there, and the details of all the persons he inquired after then living; to say that they were ready to serve him to the best of their ability, judicially or extra-judicially, but also to remind him that he had been called ARTURO. PEDRO CASTRO writes from Melipilla, on October 29, 1867, to Sir ROGER TICHBORNE, asking him for a copy of his photograph, and enclosing one of his own. To this the Defendant replies, on January 1, 1868, from No. 25, Poultry, asking Don PEDRO CASTRO to beg Dona FRANCISCA AHUMADA to send him a small portion of the lock of his hair which she had kept, not to send all, but only a portion. He says, also, that he will have a photograph taken to send. If they wanted to send a photograph, why, instead of having a fresh one taken, did they not send one of ROGER TICHBORNE taken the last time he was at Santiago? To this letter PEDRO CASTRO replies on February 26, 1868, stating that an agent had come over to Melipilla for his opponents. You see that Don SEVERO BARRA had been making inquiries, and he (Don PEDRO) says:—"The Mr. ARTHUR ORTON was the son of a London butcher. The story of your being the son of a butcher springs from the fact that you wished to say that your father was Chancellor to the QUEEN, and your being ignorant of Spanish." Then he writes to ROUS on the 28th April, in which he speaks of having received the letter enclosing a lock

* Mr. HAWKINS was not honest enough to state that three of the names which the Claimant communicated through Mr. HOPKINS to Mr. KILLEY (Vol. II., page 399) were identical with those of three sailors on board the 'Bella.' A full list of the crew appears in Vol. II. page 398. The fact that the Claimant mentioned, on his arrival in England to Mr. HOPKINS these three names as those who were saved from the 'Bella,' which names existed in the crew list of that ship as sailing from Rio, is evidence of a character unanswerable in his favour. This crew list could not have come into the possession of the Claimant before he instructed Mr. HOPKINS to write this letter to Mr. KILLEY, as the extract was not made by Mr. HOLLOCOMB, the British Consul at Rio de Janeiro, till March 22nd, 1867, and Mr. HOPKINS' letter to Mr. KILLEY is dated February 10th, 1867. The records of the 'Bella's' crew were to be obtained only at Rio. It was, therefore, perfectly certain that the Claimant could not have seen the list until some time after March, 1867.

* This was another falsehood. In the Defendant's cross-examination, page 1429, he says: "Several of them spoke French. ALCALDE spoke French; VERENGUEL spoke French; the aged lady spoke French; PEDRO PABLO TORO spoke French; CASTRO'S wife spoke French." Mr. MCMAHON, though present, offered no correction or contradiction.

of his hair. I want to ask you what inference you are to draw from the answer which the Defendant made to that letter, a copy of which was furnished to HOLMES? The letter to the Defendant warns him that his opponents said he was an impostor. The Defendant in his reply acknowledges the receipt of the lock of hair, saying that it was of very great importance, and mentions the death of his mother, and the number of Witnesses he had got. Notwitstanding that PEDRO CASTRO had said that the ARTHUR ORTON who was there was said to be the son of a butcher, he does not, in reply, say a single word about it. He does not say, "I never passed by the name of ARTHUR ORTON." His case is that he was never known in Melipilla as ARTHUR ORTON; and, although he had a distinct notice sent to him that "the ARTHUR ORTON who was here was said to be the son of a butcher," he does not venture to contradict the statement. There is an old saying, and it is perfectly true sometimes, that "the least said the soonest mended." And perhaps the Defendant thought that, by not saying anything about it, the name of ORTON might again be dropped. Mr. HOLMES, however, is a very shrewd person, and was very much struck with this passage in the letter of Don TOMAS CASTRO referring to ORTON, and accordingly, on the 1st May, he writes to make enquiries on the matter. But I will deal first with the preceding part of his letter. He acknowledges the lock of hair by saying, "The lock of hair which you were good enough to enclose to Sir ROGER is of much importance, because it is identically the same as his hair at this moment." Now, I don't care one single farthing what the colour of the Defendant's hair is now. I have the most striking evidence, to my mind, apart from scientific speculation, as to how it became of its present colour; but apart from that I have two or three striking facts. When the lock of hair came over from Chili, the Defendant thanked Dona AHUMADA with great glee for preserving it; and he wrote rejoicingly to ROUS, announcing the fact. And, what is more, you have heard what Mr. HOLMES says about it. You have got the lock of hair. Do you disbelieve JOHN HOLMES—do you disbelieve the Defendant in his statement to ROUS? If you don't you have the most striking proof which could be offered to you that in 1868 this Defendant and his legal adviser were of opinion that his hair was of the same identical colour as the lock which has been produced before you. Miss LODER looked at the lock of hair, and said, "This reminds me of the hair of ARTHUR ORTON." But I will give you another proof. Do you remember the advertisement which Lady TICHBORNE put in the 'Sydney Morning Herald,' where she stated in error that the hair of ROGER TICHBORNE was a very light brown? Well, GIBBES finds at that time that the hair of the Defendant is in accordance with the erroneous description inserted in the advertisement by Lady TICHBORNE. Now, let us see what the prudent Mr. HOLMES did. It was suggested to him that the wicked BARRA had first suggested the name of ORTON to the residents in Melipilla, and he writes a letter to PEDRO CASTRO asking for explicit information on the subject, and stating that he has evidence that ARTHUR ORTON is at this moment in the western part of Australia. I call your particular attention to the fact that when notice was given to the Defendant by PEDRO CASTRO that persons said he was the son of a butcher, and that he had passed as ORTON, he took no notice of it. A copy of the same letter was, however, sent to JOHN HOLMES, and he was alarmed. He wrote to Don PEDRO saying that he could not make out from his letter whether he and his family knew ARTHUR ORTON themselves or not, and asking for further information. To this Don PEDRO replied, that no one had known there the true ARTHUR ORTON, that Sir ROGER when there did bear the Christian and surname of ARTHUR ORTON, but that he had communicated to Don VALDIVIESO and others that that was not his right name, but that he belonged to the English aristocracy. In this letter Don PEDRO starts with the assumption that the Defendant is the true ROGER TICHBORNE, and, of course, if he were he could not be the true ARTHUR ORTON. But we have it proved that the man who claims to be Sir ROGER TICHBORNE did pass at Melipilla as ARTHUR ORTON, and that the name of TICHBORNE was never breathed by him during the whole time of his residence with them. But it goes further. There is a letter from the Defendant to Don PEDRO, dated May, 1868, in which he is again silent as to the name of ORTON; and, indeed, he never mentioned it until the Chili Commission became a matter of certainty. The Commission was issued, and then the Defendant, for the first time wrote, "I never passed under the name of ORTON." This latter correspondence strikes me as being of amazing importance on several grounds. It begins with a letter written by a man familiar with all the names mentioned in it as the names of friends of ARTHUR ORTON in Melipilla. There can be no doubt, if you believe Dona HAYLEY, that the lock of hair which Dona AHUMADA possessed was a lock of hair from the lad ARTHUR ORTON—that there was no person named ROGER TICHBORNE at Melipilla—that there was no English gentleman of any sort or kind residing in the house of Dona HAYLEY, or elsewhere in Melipilla, except the youth who passed as ARTHUR ORTON. When the first letter arrived Don PEDRO took it to Dona HAYLEY, who says that at the moment they remembered the person whom they had known as ARTHUR ORTON, and were convinced that it was ARTHUR, and ARTHUR only who had written that letter, and they agreed that they would do all they could to serve him. Afterwards, when BARRA came to make the enquiry, he did not tell Dona HAYLEY he was looking for an impostor.

The LORD CHIEF JUSTICE: It matters very little, but I cannot help thinking that BARRA represented himself as coming to her on the part of the Claimant.

Mr. HAWKINS: The substance of the matter, so far as regards the evidence which we have to act upon, is this—that when inquiries were made of Dona HAYLEY about a person named TICHBORNE, she knew nothing about him, and said, "The man who wrote that letter came here and lived here as ARTHUR ORTON."

Mr. Justice LUSH: Dona HAYLEY stated in evidence that BARRA represented himself as acting for the Claimant.

The LORD CHIEF JUSTICE: He had recourse to a stratagem; but the question is not what he did, but what she said.

Mr. HAWKINS: She unquestionably informed the Defendant, rightly or wrongly, that BARRA said he was an impostor, and as regarded what was most material he said nothing, hoping, probably, that the matter would drop. But Mr. HOLMES was more wary. He knew that it was a matter of the utmost importance; he knew that rumours were abroad, and how important was the statement of Dona HAYLEY. "We did not know the real ARTHUR ORTON," which was saying, in other words—You say that ROGER TICHBORNE is the son of a baronet, but the person whom we knew lived here as ARTHUR ORTON, and stated that he was the son of a butcher. Gentlemen, I do not think I should be usefully occupying your time by reading the other letters included in that correspondence. They may be summed up in a few words. The Defendant and Mr. HOLMES pretend to be most anxious to meet those people whom the Defendant knew at Melipilla years before, and to go out with a Commission to Chili so that the Defendant may there renew his acquaintance with them; and in reply the people at Melipilla express a great desire that the Defendant should come out, and promise to give him and Mr. HOLMES a hearty welcome. These are all the observations which I think it necessary to make upon the CASTRO correspondence. I cannot allow it to pass quite away without in one word recalling to your minds the correspondence that occurred between Mr. BINGLEY, of Santiago, and Mr. HOLMES. Mr. BINGLEY was requested by Mr. HOLMES to do what he could on behalf of the Defendant; Mr. HOLMES sent him copies of the affidavits which had been made in the case to assist him in communicating with the friends of the Defendant in Chili. While these inquiries were going on in Chili, other inquiries were being prosecuted in Australia by Mr. MACKENZIE, who had been sent out for that purpose, and the result of his inquiries was embodied in a paragraph in the 'Hobart Town Mercury,' which was brought to the knowledge of the Defendant some time previous to the 16th of June, 1868, as shown by his own affidavit. The Defendant there cites the paragraph in question, in which it is said:—"We understand that he (Mr. MACKENZIE) has ascertained that the Claimant is identical with a person named ARTHUR ORTON." Now, that information, being coupled with the information obtained from Chili, it stood to reason that Commissions would be applied for by those who had to defend the interests of the infant possessor of the estate for the purpose of getting evidence both from Australia and Chili. The Defendant most violently opposed the issue of any Commission. Let me assume for a moment—that is the fair way to put it—that any one of you was making a claim to the estate to which you knew who were entitled, and that you knew perfectly well that in Chili there were at least five-and-twenty people who knew you well twelve years ago, and with whom you had been on affectionate terms, and that there was not one among them who would not say everything he or she could say in your favour—If your case were true, why should you object to evidence being taken? If there were persons in Chili or Australia who said that they knew you as ARTHUR ORTON, and you knew that you were not ARTHUR ORTON, would you not say, "I'll go and face them; when they see me they will not resist the truth; they will not look me in the face and say that I ever passed among them as ARTHUR ORTON"? If the case of the Defendant is true, why did the Defendant and his advisers strenuously resist the issuing of those Commissions? and why, when they knew that those Commissions were going out, did Mr. JOHN HOLMES, for the purpose of influencing, as I will show you, the judgment of those who were to give evidence, send out to them copies of affidavits, and assure them, in untrue language, that the Defendant had more than half gained his cause in England? Now, listen to what the Defendant says in reference to that paragraph which I have just read:—"If a Commission were sent abroad some persons might be disposed to say I am ARTHUR ORTON." If he were not ARTHUR ORTON, why should he dread the execution of the Chili Commission? If he passed by that name at Melipilla nothing could be more fatal to him. In that case, supposing he presented himself before Don PEDRO CASTRO, Dona HAYLEY, and other persons whom he had known, think what a position he would be in if, on looking at him, they said; "Why, ARTHUR ORTON, you are the man who came here in 1849—you cannot deny it"? You can deal with such people much better at a distance; you can tell them in letters how anxious you are to see them, and to talk with them about old times. You can profess that, but you dare not act upon your profession if you are the man you say you are not. You know that subsequently he swore an affidavit that he intended to go to both those places, but he went to neither. He got to Lisbon, and when there was perfectly well. He went on to Chili with Mr. STEVENS and Mr. HALL, his Counsel, and he left

them at Rio, promising to go on to Melipilla overland, whilst they went round by sea. He went a little way on the road from Rio towards the Cordilleras for the purpose of seeing a little of the country which ROGER TICHBORNE travelled, and then, under the most idle and ridiculous excuse of illness, he turned back, and he subsequently had the audacity to swear, in the Court of Common Pleas, that he never intended to go at all, and that he acted as he had done under the advice of a gentleman now unhappily dead—a most honourable man—I mean Mr. SCOTT.* The Defendant had the further audacity to say that he had medical certificates which proved that he was not in a fit condition to go. Those certificates have never been produced. Do you believe, gentlemen, that they ever existed? There is no doubt on my mind that as ARTHUR ORTON he went from Melipilla to the Cordilleras, but of the other side of the Cordilleras, which ROGER TICHBORNE travelled, he knew nothing. Do you want any further proof that he dare not face the people of Melipilla, and that the whole thing was a miserable sham? Those who knew ARTHUR ORTON well would have recognised him as ARTHUR ORTON if he had shown his face at Melipilla. Why did he let his own Attorney and Counsel go on without him, and leave them under the necessity of making an application for the postponement of the Commission until he arrived? It was postponed three or four times. There they were living in hope—that was all they had to live upon. (Laughter.) I pity Mr. STEVENS and Mr. HALL, who were literally made a pair of fools. (Laughter.) At last the Commission went on without him, while he turned back, and when the evidence had been taken in his absence, they returned to England. Then, naturally enough, followed that remarkable meeting at the 'Swan' at Alresford, in which the Defendant was very properly called upon to give an account of his conduct to those who had taken an active interest in his affairs.

[It being four o'clock the Court then adjourned.]

* Mr. SCOTT, in his evidence on the first Trial said (page 377): "*I have no more doubt that he is Roger Tichborne than I have of my own existence.*" Would the fact of the Defendant having told a falsehood prevent Mr. SCOTT from swearing the truth as to the identity of his old friend, ROGER TICHBORNE?

SCENE IN PALACE YARD.

The 'Daily Telegraph' concludes its report of this day's proceedings with the following:—

"Apprehending a renewal of the disgraceful scene of Thursday afternoon, the police were well prepared yesterday to give Mr. HAWKINS any protection he might need on leaving the Court. The precautions were far from unnecessary, for when the learned gentleman had emerged from the Judges' private entrance, and was crossing the road in the direction of Victoria-street, he was recognised by the loiterers, and cries of 'HAWKINS! HAWKINS!' being raised, the crowd—which had for the most part been expecting him at a different point—began to rush towards him. The constables, however, were still more alert, and Inspector DENNING having seen Mr. HAWKINS to a cab the latter drove along Victoria-street, still attended for a short distance by a guard of policemen. Though no one actually attempted to lay hands on the learned Counsel four young men, who seemed to the police to be seeking to incite a breach of the peace, were apprehended, and were brought up at the Westminster Police Court, and severally fined."

TICHBORNE LETTER.

The Court of Queen's Bench, January 16th, 1874.

DEAR MRS. HELSBY,—I hope Mr. HELSBY and your sons arrived home quite safe.

Mr. HAWKINS commenced his speech yesterday for the Prosecution, with all the venom of the Black Snake, and which reminds me of the well-known lines:—

"A voice was heard with more of scorn than hate—
Poor, purblind creature of accursed fate—
Ready for thirty pence to sell thy GOD,
And trample CHRIST for Hell's approving nod."

I rather think he is doing more good than harm; he is so disgusting, that he must evidently disgust both the Jury and the public. When I say the Jury, I don't mean HAWKINS'S personal friends who are on it. The Foreman, Mr. WM. TAYLOR, and Mr. SHEPPARD, they, of course, will go with him. It is extraordinary how these people (counsel) will lie, and yet it is supposed to be a Court of Justice. I should think there are more lies told within its walls than all over London.

I received a letter from Mrs. ONSLOW this morning. She tells me poor ONSLOW is very unwell; he cannot sleep at nights, and is giving much to grief. It is shameful the way they speak and write about this gentleman. A more honourable and truthful gentleman I should think never lived. Well, the only solution one can put on it is that they are paid to lie, and disgrace others when occasion requires it; or, in other words—

"A tongue that glozes while you're face to face,
But spits its poison when you've left the place."

I am writing under difficulties, hearing this——all the while.—Yours, sincerely,

R. C. D. TICHBORNE.

Mrs. HELSBY, Lymington, Hants.

THE CASTLEMAINE TRIAL IN 1859.

The subjoined declaration of WILLIAM BRICE, and letter from Professor ANDERSON, prove the truth of the Claimant's statement as to ARTHUR ORTON and himself being tried for horse-stealing, at Castlemaine, in 1859.—For further information on this subject, see *Trial*, Vol. IV., pages 254-5.

DECLARATION OF WILLIAM BRICE.

I, the undersigned WILLIAM BRICE, son of WILLIAM BRICE, of the Island of Guernsey, do hereby solemnly declare that in the year 1858, or about that time, I was residing in Castlemaine, Victoria, South Australia, and that I heard of the Crown prosecution against one ARTHUR ORTON and THOMAS CASTRO for horse-stealing; and that having lost horses of my own I intended to have been present at the Trial. I was prevented from doing so because on taking up the local newspaper, the 'Mount Alexander Mail,' I found a full report, in which it was declared that the prisoners were acquitted of the charge.

I remember well that at the time Professor ANDERSON, "the Wizard of the North," was acting in Castlemaine, and his daughter must have been cognisant of the said trial.

The men were tried by the Judge in Sessions. Captain HARRISON was a Stipendiary Magistrate at the time. I solemnly and positively declare that the Prosecution against ARTHUR ORTON and THOMAS CASTRO was a Crown Prosecution.

I verily believe that the person who appeared before the Court at Castlemaine, accused of horse-stealing, under the name of THOMAS CASTRO, is Sir R. TICHBORNE, Baronet, now detained in her Majesty's Prison at Dartmoor. I am convinced that he is not ARTHUR ORTON.

I solemnly declare that I have no interest in the case above mentioned. That I have not been asked to make this declaration. I do it spontaneously as an act of duty towards a man who I firmly believe is mistaken for another.

Declared solemnly, signed, sealed, and delivered before JOHN SULLIVAN, Esq., Notary Public, in the Island of Guernsey, where stamps are not used, on the ninth day of April, in the year of our Lord 1877.

WILLIAM BRICE.

In testimonium veritatis JOHN SULLIVAN, Notarius Publius, Channel Island.

Witness—Lt.-Col. S. DEFEELY.

LETTER FROM WILLIAM BRICE.

27, Park-street, Guernsey, April 10th, 1877.

HONOURED SIR,—I have the honour to acknowledge the receipt of your letter of the 7th inst., and in reply, to the best of my knowledge, it was before a Judge and Jury the case was tried. I find I have made a mistake in the date, stating '58 instead of '59. Captain HARRISON was only Stipendiary Magistrate, and as such had only the power of committing; and Mr. KENTISH was Clerk of the Court. No Magistrates sit with the Judge on Trials for horse-stealing. Captain HARRISON'S authority was only for petty offences and debts, if appealed to, within one month. I cannot tell which of the detectives had the case in hand. I was acquainted with all of them, having given them the brands of the horses we had lost. I hope, sir, you have given Mr. PITMAN the same information as I have received from you to-day, as it will be most essential, for he can give you the most positive answers; both from the Court records and the files of the 'Mount Alexander Mail,' being on the spot. You will please observe, sir, Churton, formerly called "Forest Creek," is three miles on the road to Melbourne, from Castlemaine. With every sentiment of deference and respect I have the honour to be, honoured sir, your most obedient servant,

WILLIAM BRICE.

GUILDFORD ONSLOW, Esq.

LETTER FROM PROFESSOR J. H. ANDERSON.

We print the following letter: its writer died a few weeks after it was written:

TO THE EDITOR OF 'THE TIMES.'

SIR,—It being suggested to me that in the cause of truth and justice, I should, through the medium of your valuable columns, repeat the assertion I made at the Oxford Rooms, Oxford-street, and at the Royal Amphitheatre, Liverpool: When THOMAS CASTRO and ARTHUR ORTON were acquitted at Castlemaine in 1857 or '9, THOMAS CASTRO made me a present of a whip, which I still have in my possession, given me as a momento of the acquittal. I declare this as a truth which cannot be denied. My reason for not appearing at the Trial is my ill-health, and the strict injunctions of Sir HENRY COOPER, my medical adviser, not to attempt to travel.—I am, sir, yours respectfully,

JOHN HENRY ANDERSON,
Wizard of the North.

Public Rooms, Hull, Jan. 9, 1874.

ONE HUNDRED AND SIXTY-FIRST DAY.——MONDAY, JANUARY 19TH, 1874.

The Trial of the Claimant for perjury was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH.

On the learned Judges taking their seats on the Bench the Lord Chief Justice, addressing Mr. HAWKINS, expressed a hope that the learned Counsel had not suffered from what occurred on Friday afternoon.

Mr. HAWKINS replied that he had not.

Mr. HAWKINS, Q.C., continuing his reply, said—Gentlemen of the Jury,—We left off on Friday night with that meeting of the friends of the Defendant at Alresford. That meeting was held for the purpose of taking into consideration the results of the Chili Commission, which were certainly well calculated to create a feeling of alarm amongst his supporters. It was attended, you will recollect, by Mr. SCOTT, Mr. GUILDFORD ONSLOW, Colonel LUSHINGTON, and others; and the two letters addressed in the name of STEVENS to MRS. JURY and Mrs. PARDON were laid before those gentlemen. It was alleged that they were in the handwriting of the Defendant. The question was put to him, and he declared that they had not been written by him, and that they were wicked forgeries. He made that statement in such solemn tones that the gentlemen present believed him. Those gentlemen were making advances to him, not only for the purposes of his suit, but for the support both of him and of his family. Mr. SCOTT unquestionably continued his support ignorant of the fact that the Defendant's statement was a deliberate lie. The Defendant has admitted this; but he allowed Mr. SCOTT to go on advancing him money under the impression that the letters were forgeries. The other side absolutely permitted Mr. SCOTT to go into the Witness-box and state his belief in the Defendant, ignorant of the fact that the letters were genuine. Mr. SCOTT is unfortunately dead; but I should like to have heard his opinion of the matter, if he had known that he had been so scandalously imposed upon. The letter to Mrs. PARDON, you know, was as follows:—"Will you kindly inform the lady for whom I left the letter that if she will kindly commicate with me at once she will hear something to her advantage. Please send information as to Miss LODER and as to THOMAS ORTON'S children." If this letter, which it is now admitted was written by the Defendant in an adopted name and in a feigned hand, had been acknowledged by him at that meeting, would not Mr. SCOTT have said. "Who is this lady for whom you left the letter? Why did you want to 'commicate' with her, and what was it that she would have heard to her advantage? Why do you want to know anything about Miss LODER or THOMAS ORTON'S children?" These would have been very ugly questions; and if they had been answered, Mr. SCOTT and those other gentlemen would have said, "You have deceived us; how can we believe a single word you say? We must conclude that the rumours we hear about you being ARTHUR ORTON are true." But, gentlemen, look at the still more ugly questions which the next letter suggests. It is addressed to Mrs. JURY, and it begins—"I received your kind letter this morning." Where is the letter? "I am sorry you should be so mistaken as to think I am your brother." If this letter had been acknowledged, would not the question, "Who is this lady who has wrongly written to you and expressed her opinion that you were her brother?" have been put? If he had answered that question truly, he would have said, "Why, it is ELIZABETH JURY, ARTHUR ORTON'S sister." But, the letter proceeds, "I have sent your sister a likeness of your brother's wife and child." Would not the gentleman have immediately said, "Show us a copy of that portrait," "I have likewise one of ARTHUR himself." Where is that likeness? One can easily understand why it was important to the Defendant at whatever cost to delude Mr. SCOTT into the notion that those letters were a wicked attempt to cheat him out of his estates; but instead of being the deceived, he was the deceiver; and I do not think that anything in the last action was more scandalous than to allow an honourable man like Mr. SCOTT to go into the witness-box, knowing how he had been deceived, and to give his evidence upon oath. Gentlemen, I do not think I need make any further comment upon the Alresford meeting, nor do I know that I have to trouble you with any further observations upon this part of the Case until I come to the action in the Court of Common Pleas; but there remains a body of evidence which, though I fear it will be a little tedious, must next be dealt with. I have traced the Defendant from his birthplace at Wapping, through all his wanderings, till we find him at Wagga-Wagga; and I submit that I have shown the person who kept the butcher's shop at that place, and who called himself THOMAS CASTRO, is no other than the man who sits there. I have brought before you a chain of evidence of which—unless, indeed, you believe the Witnesses to be guilty of the grossest perjury, and HOPWOOD, in particular, to be guilty of about the greatest wickedness that one man can conceive against another—there is no evading the force. I have moreover corroborated every part of it with documentary evidence, and by various little circumstances which make it certain that what the Witnesses state is true. I have shown you the correspondence with ARTHUR ORTON'S friends in Chili, who say, "Don't forget that you passed here as ARTHUR ORTON, and though these people have come here and tried to make us believe you were the son of a butcher, you said so, but it must have been your ignorance of the Spanish language, which caused you to confound the word for 'butcher,' with that for 'chancellor.'" You see how the Defendant shrinks from noticing that in his replies. You know the readiness and desire he expressed to go out to Chili, and you know how he avoided his Chili friends as he would the plague. You know how he deceived his own Attorney and his own Counsel, and the excuse he made for not going on to face the Chili Commission. These are matters which are irresistible, and yet there is a body of evidence on which I have yet to comment. The matters to which I have hitherto called your attention are not opinions but facts;* and I have searched in vain amongst the evidence for the Defence for anything in the shape of fact to set against them. A body of Witnesses have indeed been brought from Wapping to express their opinions as to the non-identity of the Defendant with ARTHUR ORTON; but I submit that their testimony is of no importance. At the best, mere opinion of identity formed solely upon view of the person in dispute is of very little value when opposed to facts leading to a contrary conclusion. This remark applies with great force when the Witnesses have enjoyed an intimate acquaintance with the person in question; but it applies with far greater force when the acquaintance has not been of that close character. It applies with amazing force when the Witness speaks after twenty years from a mere passing acquaintance. There is nothing like the test of practical experience; and I ask you is it within your own knowledge that any ordinary man can remember and describe in minute detail the features of even his most intimate friend? He may remember his general appearance, his voice, his expression, his smile, his frown, and an undefinable something which has impressed an indelible recollection of him upon his mind; but it is quite a different matter when you come to describe features. Could any of you at this moment, if you were to close your eyes, tell me anything, although you have looked at me day by day for nine months, as to the colour of my hair, the shape and length of my nose, the shape of my ears, the shape of my eyebrows, the colour of them, whether the hair in my eyebrows was long or short, or whether there was some of the hair in them long and some short. (Laughter.) Is there one of you who could do it? Would you not find yourselves marvellously at sea if you were to make such an attempt? Probably you would say, "We shall never forget you;" but could you answer those questions? Still more, could you do it twenty years hence? Suppose, for instance, that one of my friends of Friday night—(laughter)—after having looked at me for the purpose of identifying and recognising me—(renewed laughter)—and suppose that 20 years hence there should be an attempt to personate me—suppose, I say, that one of those gentlemen—(laughter)—should come forward and say, "Oh, yes, I knew him; I had my eye on him—(laughter)—I was on the look out for him for the purpose of identifying him—(laughter)—my attention was particularly drawn to him—I recollect that his eyes were"—well, I don't recollect myself what they are—(laughter)—"I recollect that his eyebrows were"—there again I don't know myself—(laughter)—"I remember the length of them"—

The LORD CHIEF JUSTICE: Have any of them found the length of your foot, Mr. HAWKINS? (Laughter.)

Mr. HAWKINS: No, my lord—a good many have tried—but I believe that there is no measurement of it on record. (Laughter.) But as I was saying, fancy only any such man coming forward twenty years hence, and saying, "I recollect all these things, and I remember a solitary pock-mark on his nose." (Laughter.) I repeat, a man may recollect your general features, but as for anything else under such circumstances, it is impossible. When, therefore, I find a Witness professing to do all this, I am disposed to question, if not the honesty, at all events the reality of his recollections. But, before I enter upon the Defendant's Wapping Witnesses it will be well to call your attention to the circumstances under which they were asked to express their opinion. You will find that, with very few exceptions, that opinion was formed and expressed at a very recent period; and I doubt whether one amongst them all can have formed an entirely unprejudiced judgment on the question. The first who had any interview with the Defendant was Mr. PAGE, the wharfinger, who saw him in February, 1868. It is worthy of remark that, although as we know from his letter to ROUS, as early as the 20th of October, 1867, he was alleged to be ARTHUR ORTON, he

* The whole of this narrative would be very convincing if it were true. But we are satisfied that nearly every word of it is false. The Chief Justice followed the same line in *his* Summing-up; innocently taking for granted that all that the Prosecuting Witnesses had sworn was gospel; and then *cadit quæstio*. And so the Defendant was convicted.

made no attempt to see one human being in Wapping, or to see any one of the friends of ARTHUR ORTON, or of the ORTON family, till February, 1868. I ask you what would have been the ordinary and natural course for a true man in his position to take? It strikes me that the obvious thing for him to do would have been to say, "Go down to Wapping and collect as many people as you like, and I will gladly meet them." He would have said "Let Miss LODER see me, and if she says I am her old sweetheart I shall be very much surprised." But if he was not the man he professed to be, he would have the greatest of all possible reasons to avoid meeting his old acquaintances as long as he could. He had a very shrewd Attorney in Mr. HOLMES—why did he not communicate to Mr. HOLMES the rumours that he was supposed to be ARTHUR ORTON? He did not do that; but long before it was publicly announced he knew that Mrs. PARDON, Mrs. FAIRHEAD, and Mrs. JACKSON had identified him as ARTHUR ORTON; and from that moment he did all he could to avoid the whole ORTON family. When, at length, the TICHBORNE family did seek to find persons that knew him, their inquiries had to be conducted stealthily. It was necessary for Mr. WHICHER to take Witnesses down to Tichborne House, and to Lady TICHBORNE'S funeral, where it was known the Defendant would be certain to attend. I say it was necessary to do that because he had not taken the course which an honest man would naturally have pursued. Before PAGE had his interview with him the Defendant had collected around him a body of persons interested, pecuniarily and otherwise, in asserting that he was ROGER TICHBORNE. As early as the month of March—on the 30th of March, 1867—Mr. GUILDFORD ONSLOW, in his letter to Mr. M'EVOY, said—"I have got £600 on his being the man." HOLMES and NORRIS likewise had a deep professional interest in establishing the claim, for NORRIS was acting for Lady TICHBORNE, and HOLMES had an interest in the will. Gentlemen, you have not seen either HOLMES or NORRIS, and I may hereafter have to say a few words about them. Mr. LIPSCOMBE, before ever he had seen the Defendant—I think it was as early as the 4th of July—had made him a "kind offer," for the Defendant writes to him, "Give my respects to Dr. LISSOM" you see he did not know him well enough to spell his name —"and tell him I should be glad to accept his kind offer if I had known it sooner." BULPETT, the banker, had scarcely, if at all, seen him before he gave him liberty to draw on him to the extent of £500; HINGSTON, BULPETT'S friend, had been betting his hundreds of pounds upon the event. TUCKER, the Protestant money lender, was on the look-out for fifty per cent. (Laughter.) BLOXAM had been engaged by HINGSTON to speculate on the event; and they were all busy, therefore, using every artifice to make the world believe that it was impossible that the Claimant could be other than the right man. Of course they never mentioned his visit to Wapping or the report that he was ORTON; but all were interested in making the world believe that he was ROGER CHARLES TICHBORNE. This was the state of things through the whole of 1867, and I call your attention to the unfairness of asking people to express their opinion after such efforts had been made to produce an impression in their minds that the Defendant was ROGER TICHBORNE, and so could not possibly be ARTHUR ORTON. Should you be surprised if, even with these influences, many of the Witnesses had failed to recognise ARTHUR ORTON in the Defendant, when you consider the altered circumstances under which they would see him. When he left Wapping he was 18 or 19 years of age; and he was then dressed in his ordinary butcher's garb. When they see him again he is marvellously increased in bulk, he is living in a style to which he had never been accustomed in Wapping; he is in a different dress; he is surrounded by strangers; and the Witnesses are told that hundreds and thousands of people have recognized him as Sir ROGER TICHBORNE. But now look for a moment at the evidence of Mr. PAGE. I daresay you remember his asseveration that the Defendant is not ARTHUR ORTON. He says that the last time he saw ORTON was in 1851, and that his judgment is formed upon a few hours' interview with the Defendant at Croydon. He says that his brother-in-law, one SHOUT, pawnbroker, had, through the medium of BLOXAM, made an advance to the Defendant of £500; and he says that he did so on a comparison of the handwriting on the bill of exchange with the signature of ROGER TICHBORNE'S will at Doctors' Commons. Now, gentlemen, we have not had the bill before us, but you have seen the best of the Defendant's writing, and I ask if you could believe it possible, though all the SHOUTS and PAGES in the world should swear it, that a man could be deceived into the idea that the Defendant's handwriting was the same as that of ROGER TICHBORNE? However, PAGE starts with every interest on behalf of his brother-in-law, not to recognise the Defendant as ARTHUR ORTON if he could help it, and PAGE himself advanced him a sum of money, of which £300 is still due. He professes to remember the hair, the eyes, the cheek-bones, and the nose. When he looks at the mouth and chin of the Defendant, however, he cannot say that they are unlike those of ARTHUR ORTON, and he tells us that when he heard him speak he would pick up something of THOMAS ORTON'S voice—though he says that in the course of twenty years the Defendant's voice may have changed. But here is a very curious thing. He says that the palms of the Defendant's hands are not horny, and he says that convinced him that he could never have been a sailor. You will remember the Defendant's letter to his "Dear Mama," in which he says that the man looked at his hands, and remarked that he could swear he could not have been a sailor all his life. Now, the first voyage of ARTHUR ORTON was made in the capacity of a mere cabin boy. Then he lived on shore at Valparaiso, from 1849 to Feb. 1851. When he left Valparaiso it is true that he shipped as an ordinary seaman, but that was only for the purpose of obtaining a free passage, and when he got home he remained at the butcher's shop till the end of 1852. In like manner, though he shipped from Hobart Town as a sailor, it was only for the sake of his passage, and we know that he landed his ponies and never again went to sea. It is therefore untrue to say that he had been so much to sea that his hands would be permanently covered with a horny excrescence. But what do you think, even with Mr. PAGE, the Defendant did? He could not even see Mr. PAGE honestly and fairly, nor tell him all that he had a right to know. But in a slight French accent—and you must judge whether that was assumed for a purpose or not —but in a slight French accent, which Mr. PAGE says struck him as remarkable, he denied all knowledge of Wapping, and though he knew that he was charged with being ARTHUR ORTON, he never said to Mr. PAGE, "Why, I knew ARTHUR ORTON; he was my most intimate friend in Australia," so as to explain why it was that he should know something about Wapping and its neighbourhood. He denied all knowledge even of the name of RICHARDSON to whom he had sent that remarkable letter. Mr. PAGE says, "I asked about RICHARDSON, but he did not even know the name." He did not know of the existence of Russell's-buildings, though he had written Russell's-buildings in the pocket-book as the address of Miss MARY ANN LODER. What do you think when you find a man thus deceiving the very person who is coming absolutely for the purpose of serving his Case? I suppose he thought that if he told Mr. PAGE the truth, Mr. PAGE would have looked a little more attentively at him, and would have said in all human probability, "After all, now I look at you a little more, I do see not only a likeness about the mouth, but I recognise a little in the upper part of the face, and detect a little more in the tone of the voice." Mr. PAGE told us very candidly that if he had even heard of that RICHARDSON correspondence it would have astonished him. He would have been much more astonished if the Defendant had mentioned those other circumstances to which I have referred. I believe it is a fact that of all the Wapping Witnesses called on the part of the Defendant there were but eight who saw the Defendant until long after the termination of the last Trial. Mr. PAGE was one. Another was that inteligent "baby" PALMER, who saw him when he was nine years old, but had never seen him since that period. There was the man STEER, who brought the fraudulent action against the railway company; there was old DANIEL COTTON, who told us that extraordinary tale about meeting ARTHUR ORTON in Santiago herding cattle, and there was WILLIAM JARVIS, who talked about the pony bite. Then there was Mr. PELLS, who, if you remember, gave this description of ARTHUR ORTON. He noticed a peculiarity which nobody else did. He said that ARTHUR ORTON had a great peculiarity of always holding his head on one side; it was he who spoke to the length of his hair on the eyebrows, and who said that his chin had the appearance of a chin with a large piece of fat stuck upon the end of it. (Laughter.) There was the man named GODHART, and there was HICKMAN, the eighth and last man who saw him before the events took place to which I am going to call your attention. All the other Witnesses had their first sight of the Defendant at some public meeting at which the Defendant was exhibited, either at Millwall, or Southampton, or the Pavilion, or the Cambridge Music-hall, or Creighton's, or within some few days of their giving evidence. Now, when and under what circumstances Mr. WHALLEY appeared upon the scene I know not; but certain it is that in the autumn of the year 1872 he, with Mr. GUILDFORD ONSLOW, Sergeant-Major MARKS, and others whose words and statements at that time were calculated to produce strong impressions upon their hearers, were attending and taking part in public meetings which were avowedly got up in London and all parts of the country for the purpose of advancing the Defendant's interests. The Defendant was exhibited as an ill-used and oppressed person, and in defiance of all decency this Prosecution was denounced by Mr. WHALLEY, by Mr. ONSLOW, and the persons who appeared on the platforms in the interest of the Defendant, as a Prosecution which was, in itself, infamous, and was got up merely for the purpose of crushing an innocent man in order to save to the TICHBORNE family the estates the possession of which they were defending. And all this was done with a view of influencing and prejudicing and inflaming the minds of the persons who were there assembled. Gentlemen, I shall call your attention to only one of these meetings, which is a good fair sample of the whole. I shall select that at CREIGHTON'S, the 'White Lion' at Shadwell, which was held, if I remember aright, somewhere about the 16th of July, 1873. Gentlemen, how that meeting was brought about we don't know. Probably we shall never know more about it than we do at present. We know, however, that a circular was issued convening it, and stating as its object the assembling together of those who wished to give evidence in the Defendant's favour. It was not a meeting, you know, at which it was said, "The Defendant is so much engaged he could not call upon you all, but he will present himself on the platform and you will thus be able to form your own independent and unbiassed judgment as to whether he

is ARTHUR ORTON or not." But the meeting was for the purpose of bringing together all those who wished to give evidence in the Defendant's favour. We know some of the persons who were there, and how very captivating that meeting was made for the persons who were assembled. Among others we know that Mr. WHALLEY was there; that the gallant Captain BROWN of the Brazilian Navy—(laughter)—but now the perjured proprietor of a pudding shop at Wapping, was there; and there was HARDING, the Secretary, to take down whatever might be thought fit. The room was full; and Mr. WHALLEY was voted to the chair, and, according to one of the Witnesses, made a "little speech." He asked if there were anybody there who recognised the Defendant. Nobody replied, and then up rose the gallant captain—(laughter)—who addressed the meeting in a very forcible speech. He told them that he knew Sir ROGER perfectly well, and that the Defendant was Sir ROGER. Then each man in the room was complimented by Mr. WHALLEY going round and saying, "What do you think of him?" Gentlemen, if you had gone there wishing to give evidence in Defendant's favour, and BROWN and Mr. WHALLEY had introduced the Defendant as an oppressed gentlemen whom they were trying to rescue from persecution, you can imagine how you would be influenced by such proceedings as these, even if nothing further had occurred. But on went BROWN. He said he knew it was Sir ROGER because he had seen the brown mark on his side when he was in his bath at Rio. I shall have to deal with "Captain BROWN" by-and-by. At present I will content myself by saying that the brown mark on the side of the Defendant is on his left side, but by the description of the room and the bath given by BROWN and the position in which he stood, the right side of ROGER TICHBORNE was towards him, and so he must have seen right through ROGER TICHBORNE to have seen the mark. (Laughter.) You know we can see through BROWN now. (Renewed laughter.) BROWN went on to say that he saw a peculiar mark upon the thumb; he could not be mistaken; he saw it when the Defendant was playing at billiards, as he held the cue in his right hand. I wonder Mr. WHALLEY did not correct him there, and say, "Ah, no, you are wrong; the thumb is on the left hand." (A laugh.) He said he had seen, moreover, a mark upon his forearm, and on the stage they went through the farce of turning up the sleeve to show the mark upon the forearm. And then BROWN described how—to use his own expression—he "smugged" ROGER away on board the 'Bella' in the cabin. He described his dress, even down to the Glengarry cap, and went on to relate, with a good deal of detail, that ROGER TICHBORNE had taken a passage in a ship going from Rio, which he had forfeited, because he was not ready to go with that vessel. Moreover, he boldly stated at the meeting that they had got the mate of the vessel which had picked up ROGER TICHBORNE. You know perfectly well whom they had got at that time. They had got that man LUIE, who at that moment had made his statement, which Mr. WHALLEY had in his pocket, and they knew at that time that they had confided LUIE to the care of PULLEN, the bill-sticker, so that no man should ever see him until they were ready to put him into the witness-box. Well, at that meeting BROWN made the people believe him, and at the conclusion of his speech they cried "Bravo, BROWN"—(laughter)—and looked upon the Defendant as a grievously ill-used individual. There was not a single man at the meeting who did not believe BROWN. There is not a single man who does not know now that BROWN is a perjurer, and that by his false and wicked statement he imposed upon the people who were at that meeting, and told them these untruths for the purpose of influencing and warping their judgment.

Mr. Justice LUSH: Was there not a person turned out of the room?

Mr. HAWKINS: Yes, my lord.

Mr. Justice LUSH: He expressed a different opinion.

Mr. HAWKINS: My modesty prevented me from mentioning him, because he was said to belong to my party. (A laugh.)

Mr. Justice LUSH: But you said everybody there believed in him.

The LORD CHIEF JUSTICE: He was said to have been a spy.

Mr. HAWKINS: Yes, they said he was a spy. He was a most respectable spy. (A laugh.) However, they would not have him. They had only collected together the people who wished to give evidence in the Defendant's favour, and what right had anyone wishing to form his own honest judgment in the matter to be there? (A laugh.) Are you surprised that, when people are assembled under such circumstances as these, and are told that beyond all question he is Sir ROGER TICHBORNE, with so many circumstantial details to support the statement, they should be deceived, cajoled, and imposed upon, and should come to the conclusion that he cannot be ARTHUR ORTON. So much for what took place at CREIGHTON'S. I have now to deal with the evidence of the people themselves who were called into the witness-box and expressed their opinion. I do not mean to say they were all at CREIGHTON'S, but for the most part you will find that they were influenced by what they saw at public meetings like that, or if not so their testimony is almost beneath contempt. I shall not read their evidence at length, but I have taken out the pith of it to save time. What do you think, first of all, of PALMER, whom I mentioned as one of the eight? PALMER never saw ARTHUR ORTON after he (PALMER) was nine years old. It is an insult to your judgment to offer you the evidence of a man like that. What do you think of poor old Mrs. BUNNIDGE, who knew ARTHUR when five feet high, and says that he was so like CHARLES that she could not tell the difference between them? What is the value of such evidence? What is the value of a Witness who says all the ORTONS had humps on their backs like dromedaries. (Laughter.) What do you think of Mr. VANDERPUT SHEPPARD, who only remembers ARTHUR ORTON from having a fight with him in Ratcliffe-highway when they were both drunk? He said he noticed in that fight the large hands and the pock marks. Fancy this. A drunken man fighting in a public-house five-and-twenty years ago notices the large hands and the pock marks! He never saw the Defendant at all until the night before he was put into the witness box. He says, of course, that he is not a bit like the man he fought with; but he added, rather to the dismay of those who called him, "He is the sort of man that I should estimate would come to be the same sort of built man as ARTHUR ORTON." (Laughter.) Gentlemen, do not suppose because I have called your attention to these two or three absurd Witnesses, though they are the representatives of a good large class, I am going to suggest to you that of all the Witnesses called from the neighbourhood none of them had any general recollection of the ORTON family. General recollection they might have; and I think when you come to look at the general body of Witnesses on both sides you will find that there is no great difference between them when they speak of the general appearance of ARTHUR ORTON—I say the general appearance as contra-distinguished from those descriptions which the Defendant's Witnesses profess to give about the minute details of his features. I do not, however, quite accept the description which was given by the Defendant's Counsel of ARTHUR ORTON. He said he was "a sort of colossal bullock hectoring about the streets." Nor can I admit as a physiological fact that fat boys make thin men and thin boys make fat men. I should want another Dr. WILSON to satisfy me of that. (A laugh.) There can be no doubt, however, that he was what some of the Witnesses called "a large, fleshy young man," who promised to increase more in size as he grew older. His height in his register ticket, issued in 1852, was 5ft. 9½in., and it is true that the Defendant is said to have measured only 5ft. 9in. when measured by FORRINGTON at Poet's-corner for the purpose of this cause. In reference to accepting that measurement, I would accept the oath of the Defendant himself, who swore he had been measured at 5ft. 9¼in. or 5ft. 9½in.* He is described as having round and somewhat high shoulders. You have had an opportunity of inspecting the Defendant, and are able, therefore, to form your own judgment upon that matter. He had a slouching ungainly walk, which was variously described by the Witnesses who were called before you on the part of the Defendant, resulting, as YATES said, from his being very much in-kneed; as another said, from his being slightly in-kneed; and as a third said, from the knees being too weak for the weight of his body. In illustration of the deceptive character of the recollection of these Witnesses, when they come to minute details, you find contradictory statements. Upon the question of his knees, you find Mr. GODHART and Mr. FINNIS directly at issue. Mr. HAYWARD says he turned his left knee in much more than the right, while Mr. GRADY says he turned his right knee in more than the left. Some persons say he had high cheek-bones. I doubt very much, Gentlemen, if you were to strip the cheek bones of the Defendant of the encumbering fat, any other description could be given of them. There was a projecting upper lip, they say, which when raised showed four large teeth beneath. You must bear in mind you do not see these teeth in the Defendant now, and, therefore, as to that there seems to me to be nothing in it. FINNIS said the upper part of the face, the eye, and the forehead, bore a resemblance to old ORTON, though it was, he said, but slight. You will find that almost every feature is recognized by one or other of the Witnesses. PAGE could not detect the likeness in the upper part of his face; but he will not say that the mouth (with the teeth out), and the expression, are not like ARTHUR ORTON. Moreover, FINNIS said the back of the head was shaped like GEORGE'S and THOMAS'S. I rather think GODHART said the upper part of the head was totally unlike any of the ORTON family. MYERS thought ORTON'S head as a lad was the size of the present Defendant's, and said he saw no resemblance in the features to any of the family. He differs from GODHART, FINNIS, and PAGE in that respect, but he says he does see some likeness to the old gentleman in the lower part of the neck. Whether there was a family likeness or not you will be able to form your own opinion, because you have the likenesses of old Mr. and Mrs. ORTON before you. Now, as to the hair, it is no part of my case to say that ARTHUR ORTON'S hair was not, as described, light brown; indeed, it is part of my case that it was, because the Witness upon whom I confess I place immense reliance—I speak of Miss LODER—says the hair was light brown; and taking in her hand the lock of hair sent from Chili, "This," she said, "is the colour of ARTHUR ORTON'S hair." Mr. PAGE says the same thing; so that you may take it that when he left England in 1852 it was light brown. As to what colour it was in 1855, I leave it to you to draw your own inference from the circumstances I mentioned to you a day or two ago. The advertisement which was put into the papers by CUBITT described

* This was probably as he stood in his shoes—but the question was not asked. In fact Sergeant BALLANTINE took no heed of anything. See cross-examination, page 1666.

the hair of ROGER TICHBORNE erroneously as very light brown. We know that ROGER TICHBORNE had dark brown hair. Now, if the description in the advertisement had led the Defendant to present himself to GIBBES with hair approaching to black, do you not suppose that GIBBES would have immediately said, "There is a distinct difference between this man and the one described in the advertisement; the hair is not the same"? But Mr. GIBBES says he and his wife read the advertisement and identified him by reason of his correspondence with the description given. But it does not rest there, for when the letter was sent over from Chili by Don PEDRO CASTRO, informing him that Dona AHUMADA had a lock of his hair, he said he would be glad if she would send it over. Can you suppose when it was sent over that they did not look to see if it corresponded with the Defendant's hair? Mr. HOLMES says he did, and wrote out thanking Don PEDRO CASTRO for the lock of hair, which he said was of much importance, because it was identical with the hair of the Defendant. Was that true or was it a lie? I will not impute the latter, for there is no reason to suppose that Mr. HOLMES would write a deliberate falsehood.

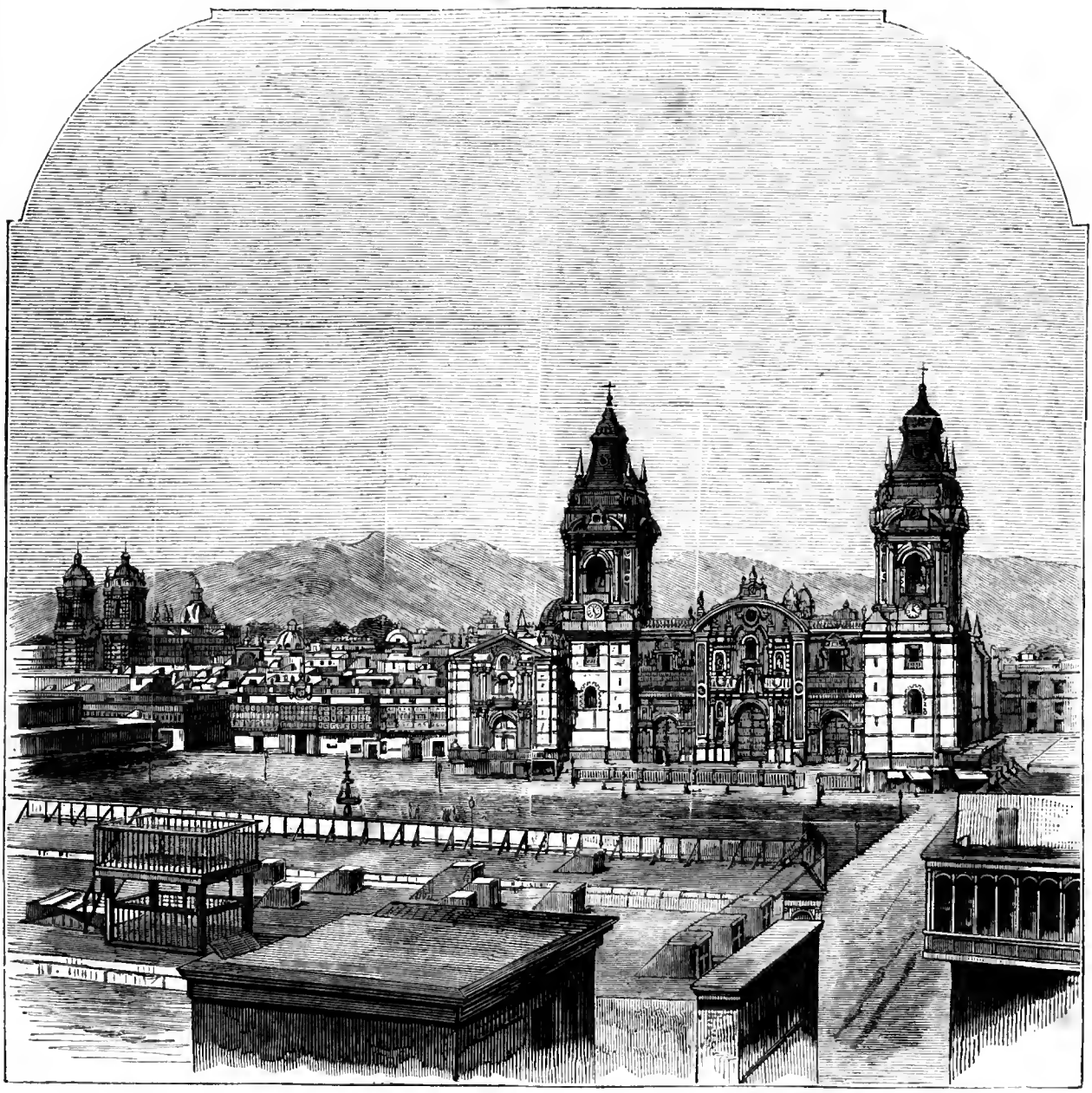
The LORD CHIEF JUSTICE: It is open to the contention that it was written to dispose the people out there in his favour.

Mr. HAWKINS: At all events my observations would apply, because the Defendant himself writes—"I am much obliged for the lock of hair;" and you will not forget the glee with which he wrote to Mr. ROUS to say he had got a lock of his hair which had arrived from PEDRO CASTRO. If you couple these things together, there can be no doubt that ARTHUR ORTON'S hair was light brown, and that at that period the Defendant's was lighter than it appears this day. Mr. GOSFORD saw the Defendant early in January, 1867, and says he observed the hair particularly, and then it was much lighter than it is now, and bearing no resemblance to it as it now appears. Gentlemen, I am not interested in disputing the testimony of Mr. ATTWELL, who says he has been supplying the Defendant with no actual dye for the hair, but I can understand that colouring matter may be put into pomade, or there may be artificial modes of making the hair dark without resorting to destructive dyes. Therefore, I say that Mr. ATTWELL'S testimony is of no importance in removing me from the position that ARTHUR ORTON'S hair was light brown, and that the Defendant's was a lighter brown than it appears now.* Gentlemen, I have no right, and I don't mean here to import any observation of my own into the case, but I simply say you have had the opportunity of looking at it since the commencement of this case, and it will be for you to say whether you have not seen it in varying shades at times. I come now to the ears and earrings, which I shall deal with very briefly. First of all, I deny the fact that ARTHUR ORTON wore earrings; and secondly, if he wore them at all, he wore them for such a short time that all trace of them would be removed after a long series of years. There are some Witnesses on this subject I distrust altogether, as I also distrust some of the Australian Witnesses, the more particularly those who speak to a scar upon ARTHUR ORTON and a solitary pockmark on his nose. Now, EDMUND ORTON, according to the evidence of some of these Witnesses, did wear earrings. As to SALLAWAY, who said he thought he saw earrings in the ears of the Defendant, one cannot help remarking this—he said he never recollected anything about the earrings until his wife asked whether he could not, and he did. That sort of evidence is very unreliable. But there was one Witness who, above all others, could not have failed to discern the earrings if they had been there. A thousand Witnesses adding their testimony to that of Miss LODER could scarcely have made it stronger than it stands. Don't suppose that because Miss LODER says, "I will not swear he had not a hole in his ear," that therefore it makes her evidence less strong. Because all that an honest Witness could say in such a case would be, "I have continually seen the person, and I don't think such a mark existed. I will not swear that it was not there, but I will swear that I never saw it, and I think it impossible that it could have been there without my noticing it." What could you have stronger than that? Then as to the voice. YATES said, "Old ORTON had a husky voice, as if there was something in his throat." PAGE says, "THOMAS had a remarkably husky voice. ARTHUR'S voice resembled THOMAS'S, but it was softer." GODHART said, "ARTHUR had a low tone, and then it appeared to break into huskiness." WESTON said, "ARTHUR was a gruff speaking man." FINNIS said "ARTHUR was rather gruff." Mr. PAGE also said, in addition to what I have already quoted, "The voice of THOMAS was more like this Defendant. I can pick up now and then something of THOMAS ORTON in that man's voice. I can, indeed." You have heard the Defendant speak—but not often—and I leave you to judge whether the descriptions given by those Witnesses apply to his voice or not. Who of all persons in the world would be likely to remember the voice better than Miss LODER? The Defendant's Counsel was right in saying that she could not make a mistake as to the voice, and they therefore resort to the expedient of charging her with perjury in order to get rid of her testimony. She, however, says that when she heard the Defendant's voice she knew it at once as that of ARTHUR ORTON. Need I say more upon the subject of the voice? Gentlemen, that ARTHUR ORTON had small-pox in his youth is unquestioned, but it was in so mild a form as to leave no traces behind. There are many Witnesses who are called to speak to that; some, no doubt, say that ARTHUR ORTON was marked; but here again I rely upon the testimony of Miss LODER. Who could tell so well as the girl to whom ARTHUR ORTON was paying his addresses whether the young man who was making love to her was marked with small-pox in the face? It seems to me that her testimony on that subject is absolutely irresistible. As to St. Vitus's dance, it is not disputed that ARTHUR ORTON had it, or that he went a voyage in the 'Busy' with Captain ANGELL to cure it, and that when he returned he was much better, and that there were some remains of it left, in the shape of a slight twitch he had, when he left England in 1852, which I invite you to believe is the same as that you have seen in the Defendant. But says the Defendant's Counsel, ARTHUR ORTON had immensely large hands and feet. On that I would first make the general remark that if the Defendant's hands and feet could be severed from his present enormous bulk and attached to the body of ARTHUR ORTON as it was when it weighed only 13 stone, when he first returned from Chili, I doubt whether you would find them such small hands and feet. The first witness was YATES, who produced a last which he swore was the one upon which he made ARTHUR ORTON'S shoes. Are you satisfied that he was honestly producing to you that last? If he was, I shall show you that it very little advanced the cause of the Defendant; but I say it is not reliable testimony. In answer to a question from Mr. Justice MELLOR, the Witness said it was "fitted up now as it was with pieces of leather 20 years ago." He said he might have used it since, "but the fittings up had never been off." And though he made boots for other members of the family, we have no other last produced here—we have only ARTHUR'S last. Upon examination of the last it was found to be fitted up with two descriptions of leather, and I collected from the observation of one of your body that one description could not have been there more than ten years ago; and one portion was fastened on with rivets, which one of you said must have been fastened on within 12 or 18 months. Moreover, it was fastened on with rivets which were not in use in 1852, and to make this ARTHUR ORTON'S last you must have the way in which it was fitted up in 1852; and if you have not that this is no longer evidence. It is most suspicious when YATES says that the last has never been altered, and that the fittings had never been removed. If that be not true, the last must be swept away, and must be treated as if it had never been introduced. Suppose the last to be an honest one, it would be of very little value, and I will tell you the reason. I have called two gentlemen who made boots for this Defendant at a time when, in all probability, the importance of making out his feet to be small or large was a matter which had not been considered. One of these was Mr. LUKE JEFFERY, manager to Messrs. BOWLEY, who said the Defendant ordered of them white canvas boots, with side springs for shipboard. He gave us the measurement, which he described as being in his judgment a very large size; and he said that if the boots had been for rougher wear, they would have been somewhat larger. Mr. LOBB, of Regent-street, took the measure in 1869, still before the question of the large feet and hands of ARTHUR ORTON had been brought into question. The boots were made and returned to him because they were too tight about the calf. There is the man who ordered them. What does Mr. LOBB say? He calls it a good full middle-sized foot. If you compare the three lasts this is the result—YATES, 11¾in.; BOWLEY, 11⅝in.; LOBB, 11¼in. That is the difference, assuming that YATES has here given you an honest last. That does not differ materially from the last of Mr. BOWLEY or Mr. LOBB, if you take into account the style of boot ordered to be made. Consider the boots to be made on YATES'S last; they are not light boots, or for dinner, gentlemen's walking, or even shooting boots, but they are made for a slaughterman, and he wore them with thick stockings. Of course ARTHUR ORTON'S butcher's boots would require a larger last than his ordinary boots. One knows perfectly well when people make observations upon the size of the feet they are very likely to be deceived by the mere make of the boot. These observations are all I think it necessary to make with regard to the feet; but I don't for a moment forget WESTON, speaking after 20 years, saying that, "taking it by the eye," he should say ARTHUR ORTON'S boots were elevens. By way of general observation with regard to the hands, I have little to add. One of the Defendant's Witnesses professes to speak to the hands as being large, and that I think is FINNIS. He speaks to a circumstance which is worthy of your consideration, because it is absolutely without corroboration, and must have met with some corroboration if it had occurred. He says his reason for noticing ARTHUR ORTON'S hands was that he got upset in a boat with ARTHUR ORTON, and was carried by the stream under two tiers of vessels. ARTHUR ORTON was able to grasp the sponson piece of one of the vessels, which FINNIS, who has a smaller hand, had failed to do. He must have been a cool sort of man to have observed the size of his friend's hands under such circumstances. FINNIS says this took place in 1852, and if so it must have been during the time that ARTHUR ORTON was making love to Miss LODER. Do you think she would not have heard of it? If they believed in this story of FINNIS at all, why did they not ask Miss LODER that question? Nobody can

* TICHBORNE'S hair has never altered since he was sent to prison—it has remained a full dark brown. The hair sent from Melipilla was a curled auburn lock.

suppose that such a thing as that would have been kept a secret from her. It would have been tolerably well known throughout Wapping. The Witnesses on the part of the Crown say there was nothing particularly large about the hands, and that looking at the size of the man they were rather small than otherwise. Well, now it is said by two or three Witnesses on the part of the Defendant that there existed upon the hands of ARTHUR ORTON scars which are not upon the hands of the Defendant. Let me deal with these scars. The evidence of these Witnesses is open to very grave suspicion. FINNIS says that he remembers seeing a very deep scar across the palm of the left hand. In this statement he is not corroborated by a single Witness. If such a scar existed it must have been noticed by those who are most intimately acquainted with ARTHUR ORTON, and it was never even cross-examined to when the Witnesses on the part of the Crown spoke to the identity of the Defendant as ARTHUR ORTON. FINNIS says that he told Mr. HENDRICKS, the then Attorney for the Defendant, about it on the very same day that the Abbe SALIS was examined, and that being the case it would seem as if the reason why no questions were asked on that subject was that Mr. HENDRICKS did not believe FINNIS. FINNIS said that he had a similar scar on his own hand, and showed it. From what he said it seemed as if he would have us believe that they had been comparing scars; and if that were the case, do you think he would have omitted to ask ARTHUR ORTON how that scar came upon his hand? Can this Witness's testimony be worth anything, when his recollection of the ORTON family is such that he says it was THOMAS and not ARTHUR who went by the name of "Bullocky"? We all know that it was ARTHUR. You must not forget, too, that FINNIS does not recollect whether, when he was at CREIGHTON'S, he mentioned the scar to anybody there. So much for the scar on the inside of the left hand. There is another scar on the outside, which is only spoken to by a Witness named MANNING. This Witness says that there was a scar between the forefinger and the thumb, which was occasioned by an accident in 1847. Such a disfigurement of the hand as that must have attracted attention. Mr. MANNING gives a very curious account of it. He says it existed in 1847. If it did, it must have existed in 1852. Is it not odd that FINNIS should have examined the inside of ORTON'S hand in 1852, and seen the scar there, and yet should never have seen the scar on the outside, though if MANNING spoke the truth, the scar was a permanent one, having been made in 1847? He says that this scar arose on an occasion when old ORTON had an attack of cholera—that ARTHUR, having a knife in his hand, became frightened, and, the knife slipping out of his hand, cut the back of the other. This occurred, according to MANNING, about six-and-twenty years ago, and consequently when ARTHUR was about thirteen years of age. He remembered it perfectly

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 60.—LIMA CATHEDRAL, SOUTH AMERICA.

well, though he never mentioned it till last year. Again, it is said that ARTHUR ORTON had scars on his face which the Defendant has not on his. The Defendant, describing ARTHUR ORTON, says that he was "sharp featured, a very large-boned man, with a lengthened face, slightly marked with the small-pox." He does not remember that he had any marks on the arm. He does not pretend to say that upon the ARTHUR ORTON whom he wants you to believe he knew there was any scar, and that seems to me worthy of notice.

Mr. Justice MELLOR: He said ARTHUR ORTON had not the slightest resemblance to himself; that he was a large-boned man, and that you could see the bones on the cheek sticking out.

Mr. HAWKINS: There was no mention of a scar. WILLIAM WESTON, a shoemaker living at Shadwell, professed to have seen the accident which resulted in the scar, and fixes the period as being about the end of August, 1851. He says that ARTHUR ORTON was riding a pony in the Commercial-road, when it shied, and he was thrown off, and cut in the left cheek, about two inches from the corner of the mouth to the corner of the eye. He also says he was assisted to Dr. MILLER'S shop, 80 or 100 people being round, and that the result was that he had a seam similar to one which he described on his own chin. The Witness further said that this scar, which was made about 20 years ago, still remained in the same state the last time he saw ARTHUR ORTON, and that he never mentioned it to the Defendant's advisers until the meeting at CREIGHTON'S on the 11th of July. To this statement I am enabled to give a complete contradiction. He says "it was a scar which anybody walking with him, and looking at him in the face, must have seen." How is it possible, then, that it could have escaped the attention of Miss LODER and Mrs. JOHNSON? If it existed, it must have been seen by them and other Witnesses. JOHN HAYWARD professed to remember a scar from the corner of the left eye to the corner of the mouth; and also one to which no one else spoke, on the right or the left temple. We have, in reference to this matter, a direct contradiction between the different Witnesses. We have WESTON, who swore that he saw a scar made in 1851, contradicted by MYERS, who swore that he saw it in 1848; and then we have MYERS swearing that he saw it in 1848, and WESTON contradicting him, and showing that it could not have existed before 1851, because previous to that period he himself, who saw the accident, was not at Wapping. CHAMPION, the old shipwright, swore that between August, 1848, and 1852 he saw the remains of the scar, but that he never spoke of it until he was in the witness-box. Then came the old carpenter, BRUNSDEN, who said he saw the scar before ARTHUR first went to sea in 1848, and that he did not notice it when he came back. It was very badly done, this scar. (Laughter.) I don't think the old man could have been in the gallery before, or he never would have said that. (Laughter.) But this is not all. It is only right that where there is a scar there should be a doctor, and therefore we have Mr. RICHARD MOORE, who lived in a top room of an unknown house in an unknown street, and who called himself a "pharmaceutical chemist." If a man does not know where he lives, nobody does.

The LORD CHIEF JUSTICE: Have you found the name in the Pharmaceutical Directory?

Mr. HAWKINS: No, we have not looked for it. This unknown man says that it was he, and not Mr. MILLER, who dressed the wound, and that it was done in September, 1852, that is, four years after Mr. MYERS saw it, and four years after it was seen by old BRUNSDEN. Mr. WESTON says there were stitches in it.

The LORD CHIEF JUSTICE: He said that ARTHUR told him so.

Mr. HAWKINS: The doctor says that there were no stitches, that in a fortnight it was well, and that it would leave "an indelible scar." His recollection of ARTHUR is, that his cheeks were puffed out, as if he was always blowing a clarionet. (Laughter.) As to the "indelible scar," I look upon what he said upon that as one of those scientific opinions which one sometimes hears, and the theory is altogether dissipated by the facts. How can you listen to such evidence? Not only is this Witness an unknown person, living in an unknown room, in an unknown house, in an unknown street, and practising in a profession in which he is unknown, but he has an unknown and mysterious friend named KIRK. He does not know who KIRK is, nor does he know what he is; he only knows that he met KIRK one day with an old friend at the corner of Gracechurch-street, and that he retired with his friend, in accordance with his "custom," I was going to say "of an afternoon," but it was in the morning, to CREIGHTON'S, to read the 'Morning Advertiser,' and see whether he could correct any evidence that might be wrong.

The LORD CHIEF JUSTICE: A number of Witnesses were, if I remember rightly, called for the Defendant from Wapping before that scar was mentioned.

Mr. HAWKINS: Yes. We afterwards called about a dozen Witnesses, because as the scar had been suggested it was desirable to call some of the persons who were likely to remember the face of ARTHUR ORTON. Gentlemen, do you believe the testimony of Miss LODER and other witnesses, who said that there was no scar; or do you believe the contradicted evidence of those who spoke to the scar on the cheek having arisen under the circumstances which they have described?

[The Court then adjourned for lunch.]

When the Court had reassembled,

Mr. HAWKINS continued—Gentlemen, on the subject of these scars on the hand and face, and on that of the pock-marks on the face, I desire for a moment to remind you of that register ticket signed by ARTHUR ORTON, in which it is stated that he had no marks upon his person. If he had had a big deep scar across his cheek—a scar extending, as one Witness said it did, from the corner of the eye to the corner of the mouth—it is impossible that it should not have been mentioned in the description given in that register. There is no mention there of a scar, or of marks of small pox, and that seems to me almost conclusive. I cannot quite part with the question of pock-marks without calling your attention to the discrepancy between the accounts of them given by the Defendant himself. In a letter he wrote in 1867 the Defendant said, "The brother of these young women was dark, and very much marked with small-pox. In a letter which he wrote four years after to ROUS, speaking of ARTHUR ORTON, he said he had a sharp, lengthy face, and was slightly marked with small-pox. These two descriptions are as different as possible. I now pass on from the marks which were visible on the person of ARTHUR ORTON as he walked about or associated with others. As regards the mark said to have been caused by a pony bite, WILLIAM JARVIS deposed that ARTHUR ORTON was bitten in the arm by a pony as he was going to mount, on the left arm above the elbow, and he said that when he pulled up his shirt sleeve he (Witness) saw a red mark, and the flesh torn about. JARVIS adds that three days after the bite he left London, and that during that time there was no doctor in attendance. Nobody else has been called to prove that ARTHUR ORTON ever was bitten by a pony at all. There has, however, been an attempt—I cannot help thinking that it is a fraudulent one—out of this alleged pony bite to create a scar which it is said does not exist on the person of the Defendant. The Defendant's Counsel called a man named EDWARD JOSEPH WAKELING, who said that in 1851 he was a pupil of Dr. DOBELL, a medical man residing in Gravel-lane; that ARTHUR ORTON having been brought there while Dr. DOBELL was away, he cauterised the place; but there was considerable hæmorrhage, that poultices were used, and that Dr. DOBELL afterwards attended the patient—a statement which is directly opposed to the testimony of JARVIS, who says that he remained in London for three days after the accident, and that no Doctor attended ARTHUR ORTON during that time. If it were necessary, as WAKELING says it was, to cauterise the wound and apply poultices, must not that have been noticed by JARVIS, who was staying in the house? I must not forget that in the cross-examination of WAKELING we come to a period in his history in which his conduct was disgraceful. There can be doubt that he had left his wife and children destitute; and it was admitted that he burnt the Bible with a lot of other books; and he gave his evidence in such a style, that during the cross-examination the Lord Chief Justice put it to me whether it was worth while to cross-examine him any more, and in fact I desisted, feeling that he had shown himself to be utterly unworthy of credit. Let me now call your attention to the tattoo marks on the person of ARTHUR ORTON, spoken to by Dona HAYLEY, Mrs. MINA JURY, and HOPWOOD. Dona HAYLEY being asked whether, during the time ARTHUR ORTON was in Melipilla, she saw any mark upon him, replied that she did. Seeing two letters on his arm, she says she asked him, "What means this?" and he told her that it meant "ARTHUR ORTON." Assuming that this conversation took place, gentlemen, you must form your own judgment. The Witness swore that she saw a mark, which she afterwards described as "a blue mark," and she also swore that when she asked ARTHUR ORTON the meaning of it he replied that the two letters were the initials of "ARTHUR ORTON." It is needless to amplify; she either saw the mark or did not see it. If she saw it, there is an end of the Case as regards the marks on the arm. But her testimony does not stand alone. Mrs. MINA JURY says that some time after ARTHUR ORTON arrived at Hobart Town she saw him strip his butcher's coat off, and saw on his arm a blue mark, and noticed the letters "A. O." Here, then, is another Witness who speak positively to having seen those letters on ORTON'S arm. HOPWOOD did not say that he saw the letters, but said that he saw a blue mark on the arm, a difference which is to my mind in favour of the Witness. If he had been disposed to manufacture for ARTHUR ORTON a scar on the arm, why should he not have gone the length of inventing the "A. O." as well as the blue mark? Further, if there were any endeavour made to invent a blue mark, why should it have been confined to two or three Witnesses? Supposing the scar on the Defendant's arm to have been produced by cauterisation, we have had the strongest evidence that as time goes a considerable contraction takes place. We have had evidence which shows that the scar in question must have contracted since the last Trial, and even between 1871 and 1873, and I think there is reason to believe that that it is a recent scar. Let me take the evidence of Mr. BARNARD HOLT. He says that it must have resulted from the skin and the tissue beneath it being removed in some way or other. Cauterisation would have produced it. At the last Trial one of the Jury who inspected the arm described it as then being of the size of a sixpence. You have seen it now Mr. SEYMOUR HADEN agreed in the opinion formed by Mr. HOLT, and Sir WILLIAM FERGUSSON cannot contradict it. I may say that I take no notice of Dr. WILSON in this matter, because I

should be insulting the other gentlemen in supposing that his opinion against theirs would be at all considered by you; but I take those three gentlemen. Of course, they cannot say that of necessity the mark was made like that, but they express their judgment to the best of their belief. You know perfectly well that the nature of tattoo marks is such that if you want to remove them it is necessary to use some process of cautery. That is beyond all question. Now let me tell you—Arthur Orton, if he be Arthur Orton, knew that he was charged to be Arthur Orton as early as 1867. Arthur Orton knew very well that the "A. O." on his arm would have been fatal to his cause if the matter had been inquired into. He had every motive for removing it. I suggest to you that he did. I can't tell you by what process it was done, but there is this remarkable fact that when he himself is asked to account for it, and when he is asked how that scar came, he says, "I can't tell you how it came." If he tells you that, you cannot believe it. He says, "I did not know that I had got it till my arm was searched for tattoo marks." Now, gentlemen, I can thoroughly understand that anybody else might have said, "I never noticed the mark on his arm." A person who was with him might not perhaps notice it. But this was the man's own arm. This is the old broken skin, the result of some wound or some burn. It must have been the result of that. It could not have been occasioned by an accident that passed by unobserved. It was on his arm in such a position that he must have seen it every day when washing. And yet he says, "I can't tell how it came there. I did not know that I had got it till my arm was searched for tattoo marks." Then he makes a wild suggestion that is not supported by Sir William Fergusson. He says that his arm was broken, and that it was a long time in splints, and that it might have been at that time that the scar came. Sir William Fergusson is asked—this his own surgeon called for the purpose of supporting his own case—"Can you tell whether or not the man ever had his arm broken?" and he says—"If it was broken it was marvellously well mended, because I cannot discover any traces of it." Of course that was all he could say. If it existed I have shown there was every motive for removing it. It would be fatal to his Case, and more especially after he knew he was charged to be Arthur Orton. It was almost the first thing he would have done. If he had the marks and removed them, as I suggest he did, it would have made the mark there is there now. Did he do it? If he did not do it, do you believe he could not tell you how that mark came there? Do you believe him when he says he did not know it was there? Is it not a flimsy excuse when he describes it as having come from splints on a broken arm? I have no more to say about that mark. You have seen it; you know the condition it was in at the last Trial. I have made such observations as I thought the Case deserved, and I submit to you that the evidence here, short as it is, is very important. Gentlemen, this brings me, I think, to pretty nearly the last matter I shall have to trouble you with in this part of the Case. I speak now of the handwriting and spelling of the Defendant, of which you have some few specimens before you, and have had the opportunity of comparing them with the handwriting of Arthur Orton. I do not ask you to compare the more recent writings of the Defendant, but look at some of the Defendant's earliest writings. I am not going to weary you with a long discussion on the matter. You had three whole days of M. Chabot's evidence, and I know there are some of you who know as much about it, and are as well able to judge of it, as M. Chabot. There are some extremely curious coincidences in the two handwritings. If you look at the "I's," the "s's," and the "n's," which you find in the writing at Melipilla, in Mrs. Macalister's books, and in the little Wagga-Wagga pocket-book, you find a marvellous similarity between them and the Defendant's writing. If you want to ascertain whether the same man who was at Hobart Town was in Foster's service the signature to the promissory note would be sufficient. I don't say that the man's handwriting has not altered since 1852, but look to the writing of the Defendant and compare it with the writing of Arthur Orton when he was in the service of Mrs. Macalister. Look at the writing of Arthur Orton to Miss Loder at Hobart Town and say, can you have any doubt on the subject? Just look at the peculiar way in which two or three words are spelt in Arthur Orton's letters, and notice the spelling in the Defendant's writing. How do you spell "few"? and how do you spell "Elizabeth"? and how do you spell "receive"? Look at the "Elizabeth" in the Defendant's writing. It is a remarkable circumstance, but you will find the "z" towers above the other small letters in "berth." It does so both in Arthur Orton's writing and in the Defendant's. Then you have that remarkable pocket-book. You have had ample opportunities of comparing the handwriting of Arthur Orton with that of the Defendant, and I say that if this stood alone it is almost impossible to resist the inference which an inspection of the handwriting would lead you to draw. Having called your attention to the evidence which has been produced as to whether the Defendant is Arthur Orton or not, just let me ask you to consider the importance which you ought to attach to the absence of some testimony of some people, still in existence, who might have been, and who have not been, brought before you. Foremost among the number there stand three persons*—Charles Orton, Mrs. Jury, and Mary Ann Tredgett. I make no complaint against the Defendant for not having produced before you Charles Orton, because, as it has already appeared, not only in evidence, but as I have stated it to you, Charles Orton, having once made a statement that the Defendant was not his brother, has since then for certain reasons made a statement that he is.

The Lord Chief Justice: Is that so?

Mr. Hawkins: Yes, my lord. I think it says so in Mr. Holmes's letter.

The Lord Chief Justice: Yes, you are right.

Mr. Hawkins: I don't blame the Defendant for not calling Charles Orton before you, because in the face of that which appears in Holmes's letter his statement that the Defendant was not his brother would be completely useless to him. On the other hand, although it has been said that I ought to have called him, it seems to me a most absurd suggestion, and I will tell you why. On the part of the Crown, as representing it, it is my bounden duty not to put before you the testimony of a person who, I think, would not offer you testimony on which you could place reliance. Why should I put before you Charles Orton? Could I in common fairness put before you a man who said at one time one thing and at another time another. Would you not have said to me if I had done it, "I think you are pressing this unfairly against the man. How can you ask us to rely upon the word of Charles Orton? His evidence is positively useless." It is not for me to say that he is not true, but I cannot ask you to act upon his testimony. Whatever I may think of the truth of it I have no right to put it before you to act upon, and for the reason I have given you. It is very different when I come to deal with the two sisters. I was going to say I was surprised, only I have heard so many things in the course of this Trial that at last I am become like old Bogle, and am not surprised at anything—but I was astonished when I heard the Defendant's Counsel ask why I had not put Orton's two sisters into the box. Why am I to put them there? It is suggested, and falsely suggested, that Orton's sisters have been tampered with by the Prosecution. It is a foul, wicked insinuation, and I say that those who told the Defendant's Counsel knew that it was not true. Early in 1867 they were in communication with Holmes, and in 1868 two of them made affidavits in the Defendant's favour. They made their affidavits and were supplied with money. They had not ceased to be adherents to the Defendant's Cause in 1871, and I will tell you why. Because during the last Trial Holmes brought them into Court with Mrs. Margaret Jury now dead.

The Lord Chief Justice: Was it Mr. Holmes who brought them?

Mr. Hawkins: I think so.

[The evidence was referred to.]

Mr. Hawkins: I think I am right. I will tell where I got what I was saying from. I got it from the testimony—well, I won't call hard names at present; I can by-and-bye—I got it from the evidence of Miss Braine.

(Mr. Hawkins here read the evidence, in which she stated that Mr. Holmes asked her if she would keep some one a place during the adjournment.)

Mr. Justice Lush: They were on his side then?

Mr. Hawkins: Yes. Further on in the report it appears that they were asked to stand up in Court, and having done so, the Defendant stated that he knew them to be Arthur Orton's sisters, and that that was only the second time he had seen them.

Mr. Justice Lush: Dr. Kenealy based his statements that they had been tampered with upon questions asked in cross-examination by the Attorney-General, the information as to which he contended that they only could have given; and yet it appears that long after that time they were called on the part of the Defendant.

Mr. Hawkins: Yes, my lord. When we find that these two women made affidavits in his favour, and when we find they are actually in Court in his interests, is it not absurd, to use no stronger term, to suppose that on the part of the Prosecution I am to call Arthur Orton's sisters.

Mr. Justice Lush: They were not called.

Mr. Hawkins: I make no complaint about that. My learned friend Mr. Serjeant Ballantine, than whom no one knows how to conduct a case more ably, thought it wise not to call them. But I use the fact in this way. In 1871 the Orton sisters were in the Defendant's interest; they had made affidavits in his favour; they had been in his pay; they were brought in by Holmes; they sat by his pet Witness, Miss Braine; they were called into court by the Defendant's Counsel, Mr. Serjeant Ballantine; there was no reason to suppose they were hostile to his cause. I want to know why the Defendant does not put those Witnesses into the box. I want to know why he does not permit you to have the explanation of those ladies' evidence, and to let you see for yourselves whether there is any of that strong family likeness that is said to exist. Gentlemen, those two sisters could have told you whether in their judgment the Defendant is their brother or not. Why should they refrain from coming into the box? Why should the Defendant shrink from putting them there? Had they any interest at all in saying that he was Arthur Orton; any interest in giving evidence against him? On the contrary, their interest would be to serve him. It is true, and they knew it, the statements they made to Holmes were made when

* All three have made affidavits, or statements, that the Claimant is not Arthur Orton. See *ante*, page 392.

BAIGENT was going about, when he could frame affidavits in his own way, and get people to swear to them. The Defendant's advisers did not think it prudent to subject them to the ordeal of cross-examination. They could tell you whether ARTHUR ORTON was scarred and marked, and whether in the voice of the Defendant they recognised the voice of their brother. They could have told told you what it was that made them, as early as the 17th of January, 1867, come to the conclusion, which they expressed, that he was their brother. They could have told you how, some time after Christmas, he was in communication with them, and what correspondence passed between them between that Christmas and the time the letter of the 7th of January was written. They could have told you what it was that made them recognise in the Defendant their own brother; when it was, and why it was, the applications for assistance were made. All these things they could have told you. They could have told you whether there was one word of truth in the Defendant's story that they last heard from ARTHUR ORTON by a letter dated from Australia in August, 1867, and they could have told you whether they had got that letter, and they could have been compelled to produce it. They could have given us some information about EDMUND, THOMAS, and ROBERT ORTON, and whether EDMUND wore earrings, as some of the Witnesses have ascribed to ARTHUR. None knew better than they. They could have told you whether the cheek was cut or his hands scarred; all personal questions they could have answered. I could not force the other side to call them, but I called attention in my opening speech to the fact that the two ORTON sisters knew all these things. As directly as a man could be challenged I challenged the Defendant to produce them and he has not dared to do so. Why? Because they have been tampered with? No; that is a false accusation to save himself from, I was going to say, the inevitable consequences of those Witnesses. These two Witnesses, if their case were true, would be more valuable to the Defendant than the whole of Wapping put together. Now, let me ask you why has not Mr HOLMES been called?

The LORD CHIEF JUSTICE: But he has been shown to have been in communication with your own side.

Mr. HAWKINS: Only on his subpœna to produce, and what I say is, he ought to have been called, and asked about his communication with the ORTON people, and what he knew of that; but they have not called him. They have given you no information from Mr. SPOFFORTH on what seems to me to demand explanation—I refer to the matter of Mr. CATOR and the £1,000. Why didn't they call Mr. JEUNE,* who went out to Australia expressly for the purpose of making inquiry? Could they not have called him to tell us whether there was an ARTHUR ORTON out there or not? I don't know how these things can be explained. The Defendant's Counsel told you to cast aside altogether as improbable the statement of his Client as to his seeing ARTHUR ORTON at Wagga-Wagga in 1866, and to treat it as a wild statement altogether. Well, it was what his own Client swore. Having told you to treat it altogether as false, he, almost in the same breath, told you that he had never felt it his duty to ask his Client where ARTHUR ORTON was. What! Not ask his own Client where he last saw the man whom he says he knows, and whom he is charged to be? Not ask under what circumstances he left him and why; not ask him why he went to Wapping? He says, "I will ask him none of these questions." Not ask him why he was desirous of communicating with ORTON'S sisters; not ask him why he gave them money; or why CHARLES ORTON was made to change his name to BRAND, and to transfer himself to Bermondsey and thence to Peckham! Not ask him why he gave CHARLES ORTON £5 notes; not ask anything about ARTHUR ORTON? Well, I can see a reason, and it is for you to say by your verdict whether I am right. The reason is, because the Defendant is ARTHUR ORTON. If he be not ARTHUR ORTON, I have a right, on the part of the Crown, to say—where is ARTHUR ORTON? You are the person who professes to have known most of him. You say he is a friend of yours, and that you went to Wapping at his bidding. Where is he? You know better than any man alive, if he be not yourself. There is no man, then, can give more information than yourself. If dead, prove his death. The Defendant's Counsel gives no evidence, no information, and he does not call one single Witness before you to give you any information about ARTHUR ORTON. He asks you to disregard his Client's oath that he saw ARTHUR ORTON in 1866, and asks you to indulge in wild speculation upon the subject. There is the man (looking at the Defendant), who knew him at Wagga-Wagga. Why, in Heaven's name, don't you ask him? It is true, as I declared, that I have ceased to wonder at things, but this does surprise me. His Counsel knows he is charged with being ARTHUR ORTON; he knows that this man has sworn he left ARTHUR ORTON in Wagga-Wagga in 1866; and he tells you that you are to disregard his oath, that you are to treat it as so much moonshine; and he says, "I did not feel it my duty to ask my Client where ARTHUR ORTON was. He swore to an untruth. Why should I pry into his little secrets? Perhaps ARTHUR ORTON would not like to have inquiries made." Very likely not. (Laughter.) He asks you to speculate upon these things, and upon the stories that were told "under the broad canopy of the heavens, sitting around the camp fires in the Australian bush." (Laughter.) But he asks you, if this speculation does not do, try another. (Laughter.)

* MR. JEUNE, BARRISTER.

The following letter, written by Mr. GUILDFORD ONSLOW, will clearly explain to the reader why Mr. JEUNE was not called by the Defence. It is thought by many that he and the Prosecution were in good understanding with each other. Although the following letter came within Mr. JEUNE'S knowledge in 1876, he has not up to the present time answered the serious charges brought against him in it.

TO THE EDITOR OF 'THE ENGLISHMAN.'

SIR,—As one of the public who subscribed largely towards the sum of Three Thousand Pounds that was given to Messrs. BAXTER, ROSE, and NORTON, for the purpose of conducting the first TICHBORNE Trial, I think I have a perfect right with my co-subscribers to ask for an explanation of the following strange, if not suspicious, circumstances:—

During the examination of the Claimant, your readers will remember that he declared "he was tried and acquitted for horse stealing at Castlemaine, with ARTHUR ORTON, in or about the year 1859." Upon this declaration Mr. JEUNE, the Junior Counsel for the Plaintiff, was despatched by Messrs. BAXTER and Co., Solicitors, to Australia, at an expense of some six hundred pounds, with the object of bringing home records of the Castlemaine Trial, together with any Witness that he might consider of service to the cause of his client. Mr. PURCELL, the Roman Catholic junior Counsel for the Defence, followed Mr. JEUNE to watch his proceedings in Australia. Mr. PURCELL brought home some valuable evidence and Documents for the Defence; Mr. JEUNE returned with him, and declared to Messrs. BAXTER and Co. that he could get no reliable information. This was much commented upon at the time, both by the Claimant and the public, since which Mr. WILLIAM LOCK, late agent to the Insolvent Debtors' Court at Melbourne, has sworn by statutory declaration that he saw Mr. JEUNE on his arrival in Melbourne, and informed him that he was present in Court as a detective officer of the Australian Government when ARTHUR ORTON and THOMAS CASTRO were tried and acquitted for horse stealing, that he knew them well as two distinct and separate persons, both at the trial and afterwards in the district. Mr. LOCK offered to accompany Mr. JEUNE to Castlemaine and show him how it was there was no record of the said trial. Mr. JEUNE refused the services of Mr. LOCK, and neglected his evidence, but showed to LOCK various photographs, out of which he immediately picked one of the Claimant, declaring it as the likeness of THOMAS CASTRO, who was tried with ARTHUR ORTON in Castlemaine. Mr. WILLIAM LOCK was for many years the agent to the Honourable Judge BAPTIST NOEL in Melbourne, but now residing in England, and who has given LOCK the highest character for honesty and trustworthiness, Judge NOEL adding that "LOCK can be safely relied upon." A person of the name of ROCHETTS (brother to the manager of the Yorkshire Bank at Goole), the Pilot of Melbourne Harbour for over twenty years, also makes oath and states as follows:—That he saw Mr. JEUNE and distinctly told him that he piloted in the 'Osprey,' and boarded her with the shipwrecked crew of the 'Bella' in 1854; that he picked out of Mr. JEUNE'S collection of photographs the portrait of young Mr. ROGER TICHBORNE, taken in Chili, and declared it to be the likeness of the passenger that was saved with the said crew. A person of the name of WILLOUGHBY has signed a declaration also to the effect that he was mate of the 'Comet' steam tug in Melbourne harbour in 1854, that he conveyed the shipwrecked crew of the 'Bella' with one passenger, a young gentleman from the 'Osprey,' to the pier at Sandridge on that occasion; that he had an interview with Mr. JEUNE, and informed him of all this, pointing out the Chilian daguerrotype as the likeness of the young gentleman he took from the 'Osprey,' and who at the time made him a present of a peculiar South American poncho or cloak. Since the TICHBORNE Trials, a Mr. JOSEPH SMITH, a solicitor's clerk, residing at Tumut in Australia, who was employed by Messrs. SEDGFIELD and ALLPORT, the solicitors of Mr. JEUNE when in Melbourne, has written a letter to his brother, Postmaster at New Swindon, and reports that by order of his employers he tracked ALFRED SMITH, the companion of THOMAS CASTRO, from Wagga-Wagga, after he took leave of the Claimant, into a lunatic asylum on the Paramatta River, near Sydney; that he recognised him as the same ALFRED SMITH that the Claimant called ARTHUR ORTON; that he holds letters of this ALFRED SMITH, written to him from the asylum in 1871. The whole of these statements were laid before Mr. JEUNE. JOSEPH SMITH still retains photographs of the celebrated pocket-book produced in Court by COX, and that he has good reasons to know that the writings were tampered with, together with certain letters which were forged, to appear as the handwriting of the Claimant, signed ARTHUR ORTON. I trust this letter may meet the eye of Mr. JEUNE, who is now practising at the bar, and that he will be kind enough to reply to what at present appears a serious charge, and one that, if not promptly explained or refuted, is calculated to injure him in his legal profession.

GUILDFORD ONSLOW.

If you can't believe that he saved ROGER TICHBORNE, believe that ROGER TICHBORNE was a thief, and that they were both rogues together; anything but force me to put this painful question to my Client, "Where is ARTHUR ORTON?" Gentlemen, he asks you to speculate. I ask you not to speculate. Apply your minds to the evidence. I ask you to look to that evidence, and looking to that evidence, you will draw from it such inferences as you think you ought to do from facts which cannot be removed, and I ask you and invite you, in drawing that inference, to come to the conclusion that the Defendant is ARTHUR ORTON, and that in his denial of it he has committed that assignment of the perjury with which he is charged. Gentlemen, I now pass on, as I have finished with the ORTON Case.

[It being twenty minutes past three, and Mr. HAWKINS requesting to be allowed to stop here, as he was entering upon a new branch of the Case, the Court adjourned.]

THE CLAIMANT AND ARTHUR ORTON.

Mr. GUILDFORD ONSLOW, writing on the Claimant's visit to Wapping, and the improbability of his being ARTHUR ORTON says:—

"He arrives in London from Australia, and drives with his family to the old Family Hotel, FORD'S, in Manchester-street, expecting to meet his mother. Much to his surprise, he finds she is in Paris. A letter is placed in his hands from her, *warning* him not to go and call on his relatives until he has seen her. Having received this caution he acts up to it. But as it was impossible, without money, to start immediately for Paris, and it being the Christmas week, he remembered his pal's instructions to go and see his pal's (ARTHUR ORTON'S) relatives in Wapping, thus acting up to the etiquette of bush life, 'to go and see your pal's relatives before you go to see your own.' Now, let us assume for a moment the Claimant is ARTHUR ORTON, about to personate a fraud. Would he have gone to Wapping at all, thus risking instant detection? At all events he would have gone on the sly, after dark. He would have walked out of the hotel: have gone to some out-of-the-way cab stand, and have ordered the cabman to have driven to some place at a distance from Wapping, say Tower Hill. But what does he do? He makes no bones of it; he sings out to the waiter, 'Call a cab, I want to go to Wapping;' makes a bargain with the cabman to take him there, wait for him, and bring him back again to the hotel. In all this he is as cool as a marble statue—no disguise, no humbug, no fear. The next thing is, he goes down to see Tichborne Park, *in disguise, under the name of* TAYLOR. Look at the difference. *No disguise, no secrecy* was required for Wapping, where as TICHBORNE he could not be known; but great disguise was required at Tichborne Park, where as TICHBORNE he might be known, and where he was known by Mr. HOPKINS, Mr. BAIGENT, and the old tenants and servants. *In spite of his disguise*, ROUS and COOPER instantly detected him. Why then, I ask, is he to be ARTHUR ORTON because he went to Wapping, and not ROGER TICHBORNE because he went to Tichborne?"

The reason why ARTHUR ORTON'S handwriting resembled the Claimant's, was because the whole of the ORTON letters, produced by the Prosecution, were forgeries—no doubt concocted by the Pittendreigh forgers. The Prosecution having numbers of the Claimant's and ROGER TICHBORNE'S letters in their possession, imitated the handwriting, to a certain extent, of each. This accounts for the likeness which existed between ROGER TICHBORNE'S handwriting and that of ARTHUR ORTON. The same errors in spelling &c., are seen in the three sets of photographed letters.

SCENES IN PALACE YARD.

The 'Daily Telegraph' winds up its report of this day's proceedings with the following:—

How it came about, whether it was on account of the wretched weather and the prevailing rain and fog, or because the Court rose so much earlier than is usual on a Monday, or—more probable than all—because of the salutary lesson conveyed by the police authorities to the riotously disposed, it is impossible to say for certain, but there can be no doubt that the crowd that gathered in Palace-yard, Westminster, and its vicinity yesterday afternoon was scantier by several hundreds than congregated on the same spot on Friday. The imposing force of police visible on every side may have had something to do with the falling off. Soon as the clock of St. Stephen's had chimed three, scores of blue-coated officials appeared as if by magic, patrolling both sides of the way between Parliament-street and Poet's corner, and down George-street, as far as Storey's Gate, while a select company of ten or a dozen loitered near the chief gates of Palace-yard, ready to perform the duty assigned to them the moment they received the signal so to do. Then there were police inside Westminster Hall, and at the Hall entrance, and grouped to the number of a few dozen under a shed in the yard itself. It is not impossible that the formidable show they made frightened away a considerable number of people, who had "come to scoff," but who, taking as Gospel truth the statement of one of the arrested on Friday that "the police collared anybody—it was first come first served with them," did not care to remain to be the prey of some over-zealous constable. The mob in Palace-yard itself was certainly not so dense as on previous occasions, but it was not difficult to account for this. On Friday and on previous days the multitude congregated there found themselves neatly trapped. As soon as the Claimant had driven away, the gates were all closed or guarded, and not even the most innocent-looking person was allowed to escape until it pleased the official in command to give the word. The "old birds," at least—those who for weeks past have made it the daily enjoyment of their lives to mob "Sir ROGER" and his Counsel, were not any longer to be caught by the transparent bait of chaff strewn for them. They prudently assembled without the iron railings of the Palace-yard trap, and evidently derived malicious satisfaction from watching the unsuspecting public swarming in at the gates. The spectacle must have gone some way towards compensating them for the disappointment they themselves were doomed to experience. At twenty-five minutes past three the "Claimant" made his appearance, and gravely made his way through the lane of his noisy admirers, extending from the Hall entrance to the road. Here a Hansom cab was hailed from the rank, and without so much as a nod or a smile of acknowledgment for those who so vociferously cried "Brayvo!" and waved their hats, he was driven away. But not one of the crowd was permitted to accompany the vehicle. As suddenly and inexorably as the banging down of the shutter at the newspaper window at the General Post Office as the clock strikes six, so were all the gates barred, and all within were prisoners, to the uproarious delight of the "tagrag and bobtail," who "chaffed" and grinned at them at the right side of the railings. Hitherto it has been the custom to let the captives out by way of the covered passages that extend from the Clock Tower to the Embankment, but yesterday afternoon this means of exit was guarded like the rest, and kept guarded until nearly four o'clock. It must have been some satisfaction to the prisoners of Palace-yard, however, to afterwards discover that they had been no worse off than the outer mob which rejoiced in liberty. The hundreds that composed it were permitted to occupy the pavements, but the police insisted on their remaining there, and resolutely resisted all attempts at "swarming" into the road. And this order was maintained until the Judges and Mr. HAWKINS and the other chief actors at the great Trial had somehow taken their departure. A few might have caught the glimpse of one or other of these as they flitted by to their carriages, but the majority decidedly did not, and not a little disappointment was visible on the faces of the rougher sort when the police, by moving off, made it known that it was "all over," and that it had ceased to be of any consequence, as far as the notabilities in question were concerned, whether they dispersed or remained.

TICHBORNE LETTER.

34, Bessboro'-street, S.W: Nov. 7th, 1873.

DEAR SIR,—Please excuse my neglect in not answering your letter before, and thanking you for the kind sympathy expressed by you towards me. I can assure you it has been a torture for years, such as very few men could stand; but GOD seems to have endowed me with a power of endurance to cope with it. For seven long years have I now been fighting for that which ought to have been granted to me in a day—I mean immediately on my mother's recognition; it was done in the Earl of ABERDEEN'S case. I cannot understand the Judges granting this adjournment; it appears to me that they have all gone mad. I have read over the law relating to a Trial at Bar, WARREN HASTINGS being the last tried; and from what I can understand they have no power to postpone the Trial a day, except over Sunday. It distinctly states the Trial shall be carried on *de die in diem* until the end of the trial. But I suppose these are not ordinary Judges; their conceit is so great, they think they can convict me as they please, and perhaps the Lord Chief Justice will be able to dine with my relations, as was his wont before the Trial, in peace, and receive their thanks for relieving them of such a nuisance. I hear that orders have already been given for the military to attend at Westminster at the close of the Trial. What wonderful precautions they are taking! I should have thought two policemen and a sub-inspector—from what I have seen of the people—would have been sufficient; a more orderly and peaceful lot of people I have never seen together than assembled at Westminster. It is only on account of the police locking them in the yard that makes them angry. I am afraid I am troubling you, therefore receive my thanks, and believe me, yours truly,

R. C. D. TICHBORNE.

VINCENZO, Count di Tergolina, 8, Euston-square.

ONE HUNDRED AND SIXTY-SECOND DAY.—TUESDAY, JANUARY 20TH, 1874.

The Trial of "the Claimant" for perjury was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH.

Dr. KENEALY was present for the first time since the conclusion of his "Summing-up."

Mr. HAWKINS, Q.C. (continuing his reply), said—Gentlemen of the Jury, if I have shown that the Defendant is ARTHUR ORTON I have proved him to be guilty of the whole of this indictment; but there remains a vast body of evidence which, if it stood alone, would convict him of rank imposture, and would show that in swearing to the name and title which he has assumed he committed the grossest perjury. By this time you are almost, if not quite, as familiar with the history of ROGER TICHBORNE as any member of his own family could be; but it may be convenient if I briefly review his life, and recall to your recollection its broad leading incidents. Let me remind you, then, of ROGER TICHBORNE'S birth, in Paris, in the year 1829. Paris was his home for the first sixteen years of his life, and he spoke no other language than French. You will remember his home in the Rue de la Ferme and in the Rue St. Honoré, but not opposite the Tuileries. You will remember his tutors, M. CHATILLON, the Abbé SALIS, and M. JOLIVALT. Do not forget the few days he spent at the school of M. DUPANLOUP. Remember his confessor and friend, PERE LEFEVRE, and his father's most intimate friends, General de MANDEVILLE and M. D'ARANZA. Remember his trips to Brittany and elsewhere, in which he was sometimes accompanied by his little brother, who used to go by the name of "Belle Tête." Do not forget his little studies, or his father's trusty valet, GOSSEIN, who attended upon him during the whole of his early life. Think of him at Stonyhurst, and his correspondence with his mother; his life there, idle though it was—the rooms he occupied, the friends he made, the amusements he followed. Do not forget the years that elapsed after he left college, and before he went into the army; his personal application for his commission to Lord FITZROY SOMERSET, of whose name, as you know, the Defendant was altogether in ignorance. Never forget his visits to Knoyle; his stay during that year with his uncle and aunt at Tichborne; his examination at Sandhurst, and his subsequent sojourn in Grosvenor-street. Glance for a moment at his army life in Dublin, the gentlemen and ladies whom he visited, the pains he took to make himself acquainted with his profession, the officers whose lasting friendship he possessed—General JONES, Colonel BICKERSTAFFE, Colonel FRASER, Major FOSTER, and a host of others. Read his life and learn his tastes and occupations in Ireland from that voluminous correspondence which passed between him and his aunt, of which the Defendant was entirely in ignorance. Pause for a moment and think of his tender attachment to his own cousin, with all its hopes and all its disappointments. Look at him as a man of business, and note the extraordinary capacity which he exhibited in his communications with Mr. GOSFORD, Mr. SLAUGHTER, Mr. BURROUGHS, and Mr. BEST, respecting his settlement and his will. Remember the year 1852, so happily commenced, its bitter trial, and the abrupt conclusion of his suit. Read, the sad, touching, and tender expressions of his feelings towards his cousin in the documents which have been before you. Remember the renewal of his hopes, so shortly to be crushed, in his determination to travel, his last visit to Tichborne terminating on June 22; his short stay at Upton; and don't forget his last visit to Paris to take leave of his parents, whom he loved, and the affectionate friends who resided there. Remember the last meal he took at his father's house; his hasty departure from town, accompanied by GOSFORD; his interview with the Rev. Mr. MOUNT on board the vessel which was to take him to Havre; his voyage to, and his travels in South America, as told in his letters from that country. Remember his last communication with GOSFORD in 1854, and his embarkation on board the 'Bella.' This is the last we know of ROGER TICHBORNE'S life; but never forget the dead silence of eleven long years, at the expiration of which, from a land the very name of which had never been mentioned by ROGER TICHBORNE—a land with no attractions for one travelling for pleasure—from that land, mixed up with associates such as life in the worst part of a distant settlement could alone produce—following a menial occupation which presented no temptation save the means of subsistence—steeped in adversity, almost compelled to beg for the very necessaries of life, as I showed you from the title notes which he wrote to Mr. GIBBES, the Defendant appeared upon the scene, changed in person, in habits, in conduct, in language, in tastes, in thought, and in feeling. I stop not now to discuss the account which he gave of this alleged transformation—I shall have to deal with that hereafter; but I beg you to note that till the year 1865 no trace or suggestion that the Defendant was the lost heir is to be found in the whole of the evidence before us—no, not even to the extent of the "R. C. T.," which afterwards found its way into Mr. HIGGINS'S little book, the Ready-Reckoner. Before that year you have it in evidence that the death of Sir JAMES TICHBORNE was duly chronicled in the 'Illustrated London News:' and that journal gave a summary of the family history. * In 1863 Lady TICHBORNE had commenced advertising, and towards the end of July, 1865, there appeared in two newspapers circulated at Wagga-Wagga—the 'Sydney Empire' and the 'Sydney Morning News'—an advertisement inserted by Mr. CUBITT, who, remarkably enough, disregarded Lady TICHBORNE'S instructions to state that her son was "thin." It is also curious that the advertisement should have been erroneous in several respects. It is wrong as to ROGER TICHBORNE'S age, for instead of being, as stated, 30, he would have been 36. ROGER TICHBORNE'S hair was dark brown—it is described as light brown. He is described as tall, with blue eyes, whereas he was not tall, and we have no evidence as to the colour of his eyes. Strangely enough, the description does agree with the Defendant. His attention was drawn to it by RICHARD NEVILL SLATE, who was commonly called DICK SLATE, and who was employed by Mr. HIGGINS to keep his books. He was an intimate friend of the Defendant. He was a person of some education, and he came from Hampshire. He was thus able to give him some instruction as to the country, and he was probably not unacquainted with Lady TICHBORNE'S delusions as to the survival of her son. Not long after the advertisement had appeared the Defendant was announced as the missing heir. Now mark the strange coincidence. Immediately following the advertisement the Defendant professed to consult Mr. GIBBES on the subject of insolvency, his debts being about £200; and whilst thus consulting Mr. GIBBES he hinted a little mysteriously, and for the first time, that he was passing by an assumed name, and that he was possessed of a property in England. He asked Mr. GIBBES whether that property must be included in his schedule if he availed himself of the law of insolvency. We know very well that one year's income of the Tichborne estates would have paid his debts a hundred times over; and therefore the absurdity of the question seems to me to demonstrate his absolute ignorance with regard to the matter. A few days afterwards, Mr. GIBBES tells us, a shipwreck was hinted at; but before that advertisement no human being has suggested that shipwreck had ever been alluded to by the Defendant. The date is fixed on the 20th of July by Mr. GIBBES himself, so that there can be no mistake. Mr. GIBBES tells us that one fine, cool, clear day, he was sitting in his office, enjoying the east wind, and wishing himself in his boat on the sea, when the Defendant said, "That is all very well; but if you had been shipwrecked as I have been you would be tired of the sea." To this same Mr. GIBBES he also began to tell general, but only general, stories about mules and precipices, and the way people travelled in South America; but there was not one reference to the accident which befel ROGER TICHBORNE'S mule when it fell down a precipice, broke its leg, and had to be killed. If he had really been ROGER TICHBORNE what would have happened would be something like this:—Mr. GIBBES would have said that mules were sure-footed animals, and ROGER would have replied, "Well, so they are, generally speaking; but they are not always, for I remember once, when I was crossing the Cordilleras, one of my baggage mules slipped"—and then the story would have come in. I don't know whether these little circumstances have struck you as being like an invitation to Mr. GIBBES to make a grand discovery; but there the thing was. Remember that in 1865 that irresistible desire seized the Defendant to carve his initials on trees, pipes, mouth-pieces, and everywhere he could. Just think of the little picture which Mr. GIBBES has drawn for us, how that the Defendant was smoking his old well-polished pipe under the verandah and the startling discovery which Mr. GIBBES made of the initials "R. C. T." upon it. "Shall I call you by your name?" says GIBBES, "Oh no, for GOD'S sake don't," says the Defendant; and that is the first account we have of his assumption of that name. Let us now see what the Defendant told Mr. GIBBES about himself. He said he was born in Dorsetshire, whereas we know he was born in Paris. He said he had two sisters who were born in France, and that his mother, after her confinement of him, went to Sherborne. That is pure invention. He says that he was in France till he was eleven or twelve years old, whereas we know he stayed till he was sixteen. In his earliest communications with GIBBES his want of education struck that gentleman as inconsistent with his account of himself; and he questioned him upon it. And what does the Defendant reply? He informed him that he could not be educated because he had a nervous affection, which he afterwards said was St. Vitus's dance. Now, it has never been suggested that ROGER TICHBORNE was afflicted with any malady

* This advertisement appears in *Trial*, Vol. II., page 415. The Claimant is supposed to have founded his claim wholly upon it: and to have conned it well over. This can never be reconciled with the real or pretended ignorance of family history, which was manifested in the Wagga-Wagga Will; set out, Vol. I., page 164.

which could have been mistaken for St. Vitus's dance.* The Defendant, moreover, stated to Mr. GIBBES that he used to go about with a Christian Brother at Winchester, who gave him a little education when he could get the opportunity. Not one word about CHATILLON, nor JOLIVALT, nor SALIS, nor any of those who really taught him. Mr. GIBBES says, that having made the discovery who he was, he pressed him to write home to Lady TICHBORNE, and at last he consented to do so. He fixed the last of his communications with his mother as the 11th of April, 1854, which was afterwards corrected. He expressed a difficulty of commencing after so long a silence, and so Mr. GIBBES consented to prepare a draft for him. Accordingly he commenced, "My dear Mother,—You will, no doubt, be surprised, after my long silence." Now that was not a bad beginning, considering that the lawyer had no filial sentiment; but the Defendant exclaimed, "Oh, Mr. GIBBES, that will never do. She will know that that is not my old style." Then he took a pen, and in his own style wrote the mutilated letter of the 17th of January—the first after twelve years' absence—and it will be for you to judge whether you think it is in the style of ROGER TICHBORNE. He says:

"Wagga Wagga, Jan. 17th, 1866.

"My dear Mother,—The delay which has taken place since my last letter, † dated 22nd April, 1854, makes it very difficult for me to comence this letter. I deeply regret the truble and anxiety I must have caused you by not writing before. But they are known to my attorney, and the more private details I will keep for your own ear. Of one thing rest assured, that although I have been in a humble condition of life, I have never let any act disgrace either you or my family."

That is not true, if you are to believe him on his oath, because he tells you over and over again, first of all that he had been associating with bushrangers, and that he and ARTHUR ORTON had been in trouble about a horse; then there were some things which, when my learned friend the Soliritor-General sought to inquire into, he said he would rather not answer, as they might tend to render him liable to a criminal prosecution; and you will not forget the scheme in his mind when the Wagga-Wagga will was framed. However, he goes on:

"I have been a poor Man and nothing worse. Mr. GIBBES suggests to me as essential That I should recall to your Memory things which can only be known to you and me, to convince you of my Identity. I don't think it needful, My Dear Mother, Although I send them, namely, the Brown mark on my side And the Card Case at Brighton. I can assure you, My Dear Mother, I have kept your promise ever since. In writing to me please enclose your letter to Mr. GIBBES, to prevent unnesersery enquiry, as I do not wisch any person to know me in this Country When I take my proper prosttion and title. Having therefore made up my mind to return and face the Sea once more, I must request to send me the Means of doing so, and paying a fue outstanding debts, I would return by the overland Mail. The passage money and other expenses would be over two Hundred pound, for I propose Sailing from Victoria, not this Colainly. And to Sail from Melbourne in my own Name. Now to annable me to do this, my dear Mother, you must send me."

If you look at one of the letters from ARTHUR ORTON to Miss LODER, you will find the expression, "If I have the means of doing so." The letter is unfinished; but Mr. GIBBES said it concluded by asking for £400, and that there was mention made in it of the horse Plenipo and his grandpapa, whom ROGER TICHBORNE never knew. I wonder, whilst he was writing to his mother to give her proofs of his identity, he did not say, "Why don't you remember my poor thumb and my little malformation?" (Laughter.) Having heard that letter, just pause for a moment to ask yourselves whether this is ROGER TICHBORNE'S old style. Will you, gentlemen, be kind enough to take that letter and compare it with the last letter written by ROGER TICHBORNE, and ask yourselves whether any one could believe, having reference to the handwriting and the composition, that they were both written by the same person?

"Buenos Ayres, 1st March, 1854.

"MY DEAR MOTHER,—It is certainly strange that every one of your letters, as far back as I can remember, have always been, and are still now, always on the same subject, without the least variation. That subject is invariably on the duties of a son towards his mother, which fills up, as a matter of course, at least the two first pages. The two other pages are generally filled up with all kinds of imaginary fears, and a list of accidents, illness, and sickness of every description, which are quite unknown to anybody else but yourself. It must be certainly the work of your imagination which makes you think of so many things. Another thing, also, where I don't think you don't at all treat me fairly; you treat me in your letters exactly like if I was twelve or thirteen years of age, and, moreover, as if I was quite incapable of taking the least care of myself. I beg to say that I am quite old enough to take care of myself, and that I act as circumstances require it. Afterwards, if you are always determined to think that I am ill or sick, or anything else, when I tell you in my letters that I am very well, it is perfectly useless for me to write to you to let you know how I am as you don't appear to believe what I say in my letters. I shall not in future wait for your letters to write, as they don't contain any news from you or my father, or any kind of news which require an answer. I shall therefore write to you from the principal towns at which I shall stop without waiting any more for your letters. The servant who I took at Lima suits me very well. I have had him to my service now for some time, and I have no doubt that he will go on as he has begun and follow me in all my travels and come back with me to England. It is quite impossible for me to fix in any kind of way the time of my return to England. The life which I am following suits my taste too well for me to leave it in a hurry, especially as my health is remarkably good, and promising to keep so for a long time to come. I left Santiago in the middle of summer (which is the month of January) that is to say on the 11th January to cross the Cordilleras of the Andes."

Then he describes what he has seen in his travels, and after saying, "When you answer this letter direct yours, Post Office, Kingston, Jamaica, West Indies, where I shall only call to get my letters on my way to Mexico," concludes by saying, "Pray give my love to my father and ALFRED, and believe me, my dear mother, your very affectionate son, R. C. TICHBORNE." You will remember there were further conversations with Mr. GIBBES in the course of which the Defendant told him that he had been habitually addicted to gambling; he spoke of his father's place as the Hermitage in Dorsetshire, and he said his property would go, in the event of his death, to a cousin, never naming his younger brother ALFRED, who would of course have succeeded him. He spoke, moreover, to Mr. GIBBES of the two branches of the TICHBORNE family, the one spelling the name with a "u" and the other with an "o"—a fact, however, which had been mentioned in the 'Illustrated News.' So passed the spring of 1866, and this was all that was communicated to Mr. GIBBES up to this time; but Lady TICHBORNE was in correspondence with him, with Mr. CUBITT, and with the Defendant, no doubt supplying them with scraps of information which they eagerly

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* A very unfavourable impression of the Claimant's truthfulness was caused by the charge that he told GIBBES that he had had St. Vitus's dance, and afterwards in the Common Pleas swore that he had not. On a superficial perusal of the evidence this accusation may appear well founded, but on being carefully looked at, it will appear that it was not the Claimant who told GIBBES that he had had St. Vitus's dance, but that it was GIBBES who told the Claimant so. Let us read GIBBES's examination and cross-examination.

"Mr. HAWKINS: Had he St. Vitus's dance?—He informed me at first that he could not be educated, because of his having a nervous affection. I asked him whether it was St. Vitus's dance that he meant, and he said yes it was.

"Dr. KENEALY: You say he spoke of a nervous complaint. Did he say how long he had had it?—He said he had had it from early youth and that on that account they could not educate him.

"Didn't you say, 'Oh that is St. Vitus's dance'?—I suggested that it might be St. Vitus's dance, and he replied 'Yes, that's what they call it.'"

There can be no doubt that if GIBBES had "suggested" meningitis—the Claimant would have given the same answer. It is ridiculous to suppose that any one, who for years had been afflicted with St. Vitus's dance like ORTON, should have forgotten the name of his complaint, and required a "suggestion" as to what it was from somebody else. But how can the Claimant's acquiescence in the name given by GIBBES to his nervous complaint be construed into his telling GIBBES its name. Yet this is the false interpretation which has been put upon his answer. We cannot but think, therefore, that the Lord Chief Justice took a wrong view of the Case when he addressed the Jury as follows: "It is for you to say whether you believe the Defendant on his oath, or whether you believe Mr. GIBBES'S statement on his oath. If he told Mr. GIBBES that he had St. Vitus's dance, he could hardly be supposed to have made the statement without it being supposed that he had. It is a question of credit, for, if he has sworn a deliberate falsehood in this, it must shake your confidence as to the truth of his other statements as to which he is contradicted by other Witnesses."—His lordship says, "if he told Mr. GIBBES that he had St. Vitus's dance." If the Jury had read with attention the evidence we have quoted, they could, as intelligent men, return no other answer than that the Claimant did not tell GIBBES that he had St. Vitus's dance, but merely adopted the name which GIBBES suggested for a disorder vaguely described by the Claimant as "a nervous complaint."—What the Claimant may have said about his incapacity for education, was probably due to a recollection of his boyish days in Paris. We know that he did not go to any school, except to DUPANLOUP'S for about a fortnight, from which his too tender-hearted mother withdrew him on the ground of his being too delicate and a nervous child; hence the "nervous complaint" to which Mr. GIBBES stood godfather.

† In ROGER'S letters to Lady DOUGHTY and Mrs. SEYMOUR, we meet in the former with the expression, "the long delay which has taken place," and the latter, "the delay that has taken place." It is noteworthy that the first letter written by the Claimant to Lady TICHBORNE, dated Wagga-Wagga, May 24, 1866, commences with, "My dear Mother,—The delay which has taken place since my last letter." Surely this coincidence is not accidental, and can only be accounted for by the writer of the three letters being one and the same person.

turned to account. I will give you an example. Up to this time ALFRED TICHBORNE'S name had never been breathed. But no sooner did the distressing tidings arrive that ALFRED was dead, than, as Mr. GIBBES said, "he went behind a tree and wept." You know, gentlemen, it was not I who turned this incident into ridicule, as I have been accused of doing. GIBBES did it himself. He laughed in his sleeve whilst he said it. I asked "Did he really cry?" and the reply was, "Well, he went behind a tree, and his eyes were red." But then you will remember that he had been washing and rubbing them with a towel, and perhaps some soap had got into them. (Laughter.) If I may be excused for mentioning it, it was long ago remarked by his lordship that when Witnesses pretend to cry, you should look for the teardrop upon their cheeks.

The LORD CHIEF JUSTICE: I was not aware that I had ever said it, but I confess the observation long ago occurred to me—I think during a trial in the Home Circuit. The fact is there are people who can look as if they were crying, but if you observe them narrowly you will see that no tear comes, and a few moments afterwards you may find them looking as cheerful as possible again. (A laugh.)

Mr. HAWKINS: I also have carefully watched Witnesses, and my observations entirely agree with that of your lordship's. But to resume my observations. At length it was determined to send the Defendant to Sydney, en route for Paris, to see Lady TICHBORNE; but it was deemed expedient that before he left Wagga-Wagga he should execute a Will, it being in contemplation to raise a sum of money from the Australian Joint Stock Bank to pay the passage money. Accordingly that Wagga-Wagga Will was prepared by Mr. GIBBES, and executed on the 1st of June, 1866. Its commencement is as follows:

"The last Will and Testament of ROGER CHARLES TICHBORNE, of Tichborne in the county of Hampshire, in England, at present of Wagga-Wagga, in the colony of New South Wales, Baronet.—I give, bequeath, and devise to my wife, MARY ANN TICHBORNE, known in New South Wales as MARY ANN CASTRO (I having married her in the name of THOMAS CASTRO), her lawful dower out of my estates. I give, bequeath, and devise to my mother—"

But here a difficulty occurred. Mr. GIBBES, of course, wanted to know what were the Christian names of Lady TICHBORNE. Now, ROGER TICHBORNE you know, could not have hesitated about his mother's name; and besides, there is a letter which shows how particular he was in observing the day of her patron, ST. HENRIETTE. They did not even know what her initials were; but one of them at last suggested that they might be got from her letters.

The LORD CHIEF JUSTICE: There you are wrong, Mr. HAWKINS. They had her letters with the initials "H. F." What happened would be that GIBBES asked what they stood for.

Mr. HAWKINS: Well, I don't know that it is very material, for there is the Defendant's unquestioned ignorance of the real name, and the initials gave rise to the notion that she was called "HANNAH FRANCES," instead of HENRIETTE FELICITE. Then the Will goes on:

"I give bequeath and devise to my mother, Lady HANNAH FRANCES TICHBORNE, in addition to her dower, the whole of my property at Cowes, in the Isle of Wight."

There being not a particle of property there held by the TICHBORNES.

"I give, bequeath and devise, to my daughter, MARY AGNES TERESA (she being the issue of my marriage with my said wife), the whole of the Wymmering estate in Hampshire; and also of my property at or near Hermitage, in Dorsetshire, inherited from my father."

There is no estate at Wymmering, and with regard to the Hermitage estate in Dorset, we have had it from the Defendant himself that in putting that in he did not refer to any property at all belonging to the TICHBORNE family. Then after some other devises he goes on:

"I appoint JOHN JERVIS, Esquire, of Bridport, in Dorsetshire, in England, and Lady HANNAH FRANCES TICHBORNE, executor and executrix, and Sir JOHN BIRD, of Herts, in case of either of them dying; and WILLIAM GIBBES guardian to the person and estates of my children, and in case of his death, HENRY ANGELL, Esq., of Dorset, in England."

Throughout the whole of this Will there is not one reference to estates which by no possibility could ROGER TICHBORNE have omitted to mention, namely, the TICHBORNE estate itself, and the estate at Upton, which had given him so much trouble and anxiety. This will, I submit, then, show the most perfect and absolute ignorance with regard to the family and its affairs; and Defendant has no alternative but to say, as indeed he swore, when asked to explain it, that the document was trumped up, and that everything was purposely put wrong, his object being to procure a loan of £70 from Mr. COTTEE, the banker. Thus, in order to get out of the difficulty which stared him in the face, he proclaimed himself to be a fraudulent knave, and suggested that the Will had been framed for the mere purpose of deception. Of course, gentlemen, it will be for you to say whether you accept that excuse or whether you do not regard it as an idle, fabricated excuse. Well, gentlemen, after the Will was made, the Defendant left Wagga-Wagga; but here I may introduce the pocket-book which was found in the street there. There are two or three entries in it which I will read. The first is, "Tichborne Hall, Surrey." Whatever he may here say about the will having been purposely concocted with wrong names, he cannot give that explanation of this entry; and it can only be taken to be another instance of his gross ignorance about the TICHBORNE family. I do not find in all ROGER'S letters any reference to Melipilla, or Hobart Town; and it is of course impossible that he should have known anything about MARY ANN LODER. Here is another entry, "ROGER TICHBORNE, Bart., some day I hope." Why, in 1865 Sir JAMES TICHBORNE was dead, and if the Defendant was the heir he was already Sir ROGER TICHBORNE.*

The LORD CHIEF JUSTICE: But how did he know the father was dead?

Mr. HAWKINS: By the advertisement.

The LORD CHIEF JUSTICE: I see nothing to show that at that time he knew of Sir JAMES TICHBORNE'S death.

Mr. HAWKINS: At all events it is a curious entry for a man to make. I don't remember a B.B.K. (Baronet of the British Kingdom) writing such an entry in his pocket-book during his father's lifetime. (Laughter.) Again, it strikes me as a very odd thing that when ROGER TICHBORNE wrote these words there should be no entry of any sort or kind referring to a shipwreck, or an 'Osprey,' or to his being picked up at sea. But let that pass. In due course, the Defendant arrived at Sydney, having left his wife with her mother at Goulburn. Soon after his arrival a letter was communicated to Mr. GIBBES from Lady TICHBORNE, which struck him as very strange, with reference to the education which her son had received, that ROGER was born at Paris, in 1829; that she believed he never knew his grandfather, the late Sir HENRY, who died before Sir JAMES was married; that he was afterwards with the Jesuits at Stonyhurst; that he afterwards went into the Carabineers, where he remained till he was 21, when he proceeded on his travels, and left Southampton for Rio. This naturally struck Mr. GIBBES as a widely different account from that which the Defendant had given him. He, therefore, caused a telegram to be sent to Sydney to make enquiry of him on the subject. He received two answers, in one of which the Defendant said his regiment was the 66th, and intimated that it was a cavalry regiment. He said that his school was the High School, Southampton. He was asked the name of the agent at Tichborne Park when he left, and he said he did not know. Fancy ROGER TICHBORNE not knowing GOSFORD! Why GOSFORD had been made executor of ROGER'S will, and he had been in direct communication with him whenever he had an opportunity. The Defendant, however, at that time evidently had never heard of GOSFORD. In his second telegram he said, "My brother was at Winchester College, Yorkshire." (A laugh.) They seemed to have pressed him again about his father's agent and he hit upon ARTHUR ORTON'S old friend ALLEN, of Bridport. Certainly no such man was ever connected with the Tichborne estates. Well, on the receipt of these extraordinary telegrams, I do not wonder that Mr. GIBBES himself determined to follow the Defendant to Sydney to see what he could make out of him there. But before Mr. GIBBES saw the Defendant in Sydney he had made reference to a Peerage and Baronetage and had found the true Christian names of Lady TICHBORNE, and when he saw the Defendant he said to him, "How came you to have given your mother's name HARRIET FRANCES?" The Defendant does not say, "Why, Mr. GIBBES, I did not mean to give you my mother's real name;" but his excuse then was, "Oh, I did that because she was always called Lady FRANCES," which most unquestionably she never was. A further interrogation took place at the office of Mr. M'CARTHY, the solicitor for the Australian Bank, who took down from the Defendant's lips the statement which the Defendant made in answer to the questions that were then and there put to

* Nothing is more amazing than the way in which Mr. HAWKINS commented on the Claimant's statements to Mr. GIBBES, the Wagga-Wagga solicitor, as to his property, education, &c. Mr. HAWKINS brusquely assumes that all the errors committed by the Claimant are evidences of his imposture, while the accurate statements are coolly passed over as if they had never been made. In other words, Mr. GIBBES is to be believed as to what he states prejudicially to the Claimant, but he is not to be believed in his favourable statements. Mr. HAWKINS seems to have overlooked the fact that while the Claimant told Mr. GIBBES of the TICHBORNE and DOUGHTY properties, *not a word of either appear in the Wagga-Wagga Will.* What was Mr. GIBBES thinking about to permit so grave an omission? In this simple fact—hitherto overlooked—we have the most conclusive evidence that the will was intentionally fictitious, as the Claimant stated in the civil suit. Mr. GIBBES in Australia, and MR. HOLMES in England, made wills for the Claimant—in which each provided handsomely for himself. The Lord Chief Justice described Mr. HOLMES' conduct as "disgraceful." That the Claimant gave Mr. GIBBES most important information as to the family, his shipwreck, the effects, "low marriage," &c., can easily be proved by reference to GIBBES' cross-examination by Dr. KENEALY. The Lord Chief Justice in summing up was about to suggest to the Jury that the Claimant might have seen a *Baronetage*, and from this source got his DOUGHTY information; but a Juror shrewdly reminded his lordship that the same *Baronetage* would have told the Claimant accurately Lady TICHBORNE'S Christian names. So his lordship significantly passed on in his judicial review.

him. You know Lady TICHBORNE had alleged that ROGER had been educated at Stonyhurst, and therefore this question was put to him, "What is the college you say you were educated at?" The mother's statement as to the college was altogether denied, and he added, said Mr. GIBBES, that he went to school at Southampton. "What regiment were you in?" "Oh," he says, "the 66th Light Dragoons, blue, sword and carbine as arms, and the colonel's name was WILSON." (A laugh.) There was no WILSON, so far as I know, in the list of the officers of the Carabineers. "In what capacity?" "Private." "What is the name of the agent?" I suppose that meant the army agent. "I forget," is the answer. "Where were you born?" "In Dorsetshire, and mother went to France immediately after her confinement, and left France for England when I was 11 or 12 years old." He said further that inasmuch as he was merely a private he had never had to undergo any examination—that was a very happy thing, as they could not cross-examine him upon that—(a laugh)—but when questioned about his drill, he said he had no drill to speak of, as he had only been thirteen days in the army—(laughter)—that he had run away and joined the dragoons; that his father followed him and brought him back, and kept him strictly at home—till when do you think?—till November, when he sailed from England. All that arose, he said, out of a money affair at Brighton, which we know was afterwards referred to as the "Card Case." Now, these were puzzling questions, and they were calculated to bother a little bit the man who had to answer them, and did not know how. Accordingly, he had to invent as he went on, or else to put in

A DREAM OF ROGER.

some name which was familiar to himself, but was not known to ROGER TICHBORNE, so far as we know. And he evidently was uneasy at finding that Lady TICHBORNE had been sending GIBBES information, for when they afterwards went down to the Metropolitan Hotel together he said—using a strong expression—"By God, I have a —— good mind not to go near her at all when I go home." (Laughter.) And I don't wonder at it, for how could he answer the questions which would be put to him? And for a little while he kept his word, because he did not go near the old lady at all until he had been down to Alresford, looked all over the Tichborne estate, had got a little bit of information about the family settlement, and got up a little pedigree from Mr. JOHN HOLMES. (Laughter.) Now, in Sydney, there was a gentleman of the name of TURVILLE—not "TURVEL," as the Defendant spells it—and he was private secretary to Sir JOHN YOUNG, the governor. He had been a great friend of Sir JAMES TICHBORNE, though he had never known ROGER TICHBORNE at all so as to have any personal acquaintance with him. He came to see him, and put such questions as he could by way of testing him. Among other things he put to him this question—"What sort of a looking woman," said Mr. TURVILLE, "was your mother? Was she thin or was she stout?" The Defendant answered, "She was a stout woman." Gentlemen, you have seen her picture, and you have heard her described, and you can, therefore, judge whether she was what might be called a stout woman. But you must not forget, with regard to this description, that the Defendant afterwards said to Mr. GIBBES that he was very fond of Mrs. BUTTS, of the Metropolitan Hotel—Mrs. BUTTS being a tall, stout, buxom woman, and like Mrs. MINA JURY—he said he liked Mrs. BUTTS because she was so like his mother.

(Laughter.) You have seen the picture of old Mrs. ORTON. I wonder was she like Mrs. BUTTS? Certainly, unless the photographs exhibited in this Court are marvellously deceptive, you could hardly say that the Dowager Lady TICHBORNE, as she appears in one of those photographs, is in the least like Mrs. MINA JURY. He said, moreover, that he should make some provision for her, because she bore this great resemblance to his mother. Mr. TURVILLE put another question to him by way of test. He asked, "If you are the man you say you are you will remember where you were and where your parents were in May, 1852?" to which the Defendant replied, "Yes, they were in Paris and I was in Dorsetshire." Mr. TURVILLE said, "You are right there, because I was with them." Now, Mr. TURVILLE drew a very erroneous conclusion from that answer. Mr. TURVILLE, it is true, was in Paris with Sir JAMES and Lady TICHBORNE; but as to the Defendant himself being in Dorsetshire in May, 1852, or May, 1851, it is altogether wrong, because during the period Mr. TURVILLE spoke of ROGER TICHBORNE, as his letters show, was actually at Portobello, so that the answer, which seems to have struck Mr. TURVILLE, was not in accordance with the truth. During that visit it was, and before any communication took place with old BOGLE, that the name of GUILFOYLE was suggested. But he said, at all events, GUILFOYLE had been at one time gardener to his father. We know beyond all question that GUILFOYLE was never gardener to Sir JAMES, though he had been to Sir EDWARD. Now, before leaving Sydney, it was suggested by Mr. GIBBES—all this, remember, takes place before either BOGLE or GUILFOYLE is seen—that a statutory declaration should be made in order that the Defendant might satisfy those to whom he might apply for money who and what he was. Accordingly the declaration was prepared; it was carefully, as Mr. GIBBES said, read over to him, and he was warned of the consequences of making it. He told Mr. GIBBES he knew all about it, and then he made and solemnly signed this declaration—"The annexed photograph, marked 'A,' is a true photographic likeness of myself." Gentlemen, I use that, because hereafter when we come to deal with the photographs which have been produced to you from the custody of Lady TICHBORNE, there will be no question, according to the Defendant's own statement, that these photographs fairly and truly represent him at this period; that is to say in 1865. ROGER TICHBORNE, you know, had sent his likeness over from Santiago in 1854. The Defendant in 1865 annexes a photograph then taken of himself in Sydney, which he says was a true photographic likeness of himself; and then he goes on to describe his arrival in Melbourne in July 1854; his leaving England in the 'Jessie Miller' upon the 28th of November; his sailing from Rio on the 26th of April; to the wreck and to his having been picked up by the 'Osprey,' Captain OWEN, by whom he was conveyed, as he says, to Melbourne. Gentlemen, I pass over altogether without comment the letters which passed between Lady TICHBORNE and the Defendant and between Lady TICHBORNE and Mr. CUBITT and Mr. GIBBES during the early part of 1866, because for the purpose I am now addressing you, I don't think they throw much light on the subject. There is, however, one to which I desire to call your attention. You will remember that there was one letter arrived in the early part of July—the letter itself is dated the 10th of May—in which Lady TICHBORNE speaks of ROGER TICHBORNE as being a good Catholic; of all his family being Catholics, but that ROGER was an exceedingly good Catholic. And in that same letter, or in a previous one, Lady TICHBORNE evinces a good deal of anxiety about his marriage. She desired to know whether he was married. Now, you remember what he did. He had been married in the early part of 1865 to MARY ANN BYRANT, by the Wesleyan minister in Wagga-Wagga. The letter of Lady TICHBORNE to Mr. CUBITT would arrive in Sydney early in the month of July. The wife of the Defendant had been left at Goulburn, midway between Wagga-Wagga and Sydney; and it is clear, I think, that within a day or two after the arrival of Lady TICHBORNE'S letter announcing that ROGER was a good Catholic, he went back to Goulburn where, as a Roman Catholic, at the Roman Catholic chapel, he was re-married to his present wife. He then returned to Sydney, and from there he wrote to Lady TICHBORNE the remarkable letter commending her to the protection of the Blessed Maria—never mentioning his marriage but concluding his letter in the way he thought best befitted a very strict and a very good Catholic.*

The LORD CHIEF JUSTICE: Have you anything to show, Mr. HAWKINS, that his going back to Goulburn was after the arrival of that letter? He is married on the 9th of July.

Mr. HAWKINS: Well, the 10th May is the date of Lady TICHBORNE'S letter, and by the ordinary course of post it would have been there about that time. There must have been something, because he had left his wife in Goulburn. They had been married early in 1861 by the Wesleyan minister. They had neither of them been discontented with the ceremony as originally performed until this month of July, 1865. Why, then, should he have gone back to Goulburn except that he heard at Sydney for the first time that Lady TICHBORNE particularly desired that he should be married in accordance with the rites of the Catholic Church? That is what I suggest to you. Well, he went back to Sydney again, and wrote to Lady TICHBORNE for the first time such a letter as a good Catholic—or as he thought a good Catholic—would write, but he never said a word about his re-marriage. Up till this time the Defendant had been in absolute and perfect ignorance of the early life of ROGER TICHBORNE. There is not a single thing down to the period to which I have now brought the Defendant—his residence in Sydney—which betrays any acquaintance of any sort or kind with the real and inner life of ROGER TICHBORNE. There are things which, of course, indicate a sort of general acquaintance, such as the "TICHBOURNE" and "TICHBURN," got from the advertisement in the 'Illustrated London News,' and there is the name of Sir JAMES TICHBORNE, got, no doubt, in the same way. But there is nothing to be found in the statement, the conduct, or the writing of the Defendant down to the period of which I am speaking to indicate any knowledge of any sort of the inner life of ROGER TICHBORNE. Wheresoever it was absolutely necessary, and he was driven to give some name or date, he curiously enough gave a name or a date which corresponded with some incident in the life of ARTHUR ORTON—his own life, I say. I come now to a period when the Defendant was no longer dependent upon mere newspaper history or such information as Lady TICHBORNE in her letters might from time to time afford him, but I come to a period when the Defendant had opportunities—and it is for you to say how far he availed himself of them—of conversing with those who, from their own personal knowledge of Sir JAMES and Lady TICHBORNE, of Sir EDWARD and Lady DOUGHTY, of the family estates, and of a variety of incidents connected with the family, were in a condition, innocently or guiltily, to contribute very largely indeed to the Defendant's then very scanty store of knowledge. In Sydney there lived four such persons. There was GUILFOYLE, the ex-gardener to Sir EDWARD DOUGHTY; BOGLE, the ex-valet, and two of BOGLE'S sons, ANDREW and JOHN. Of BOGLE'S residence there Lady TICHBORNE had informed Mr. CUBITT by letters dated 15th February and 10th May, 1866, respectively. In the letter on the 15th February she said:

"There is a man of colour in Sydney who could tell you how the family stands. His name is BOGLE, and he is quite black. ROGER knows him very well. He was valet to Sir EDWARD DOUGHTY, uncle to ROGER, and he now lives at Sydney. I am afraid that that man, as soon as he has seen ROGER will write it back to England immediately; and I am afraid of the consequence if it is not immediately attended to."

In the letter of the 10th of May, Lady TICHBORNE again alludes to BOGLE. Of course the object of the Defendant was to make it appear that the interviews which unquestionably he had with GUILFOYLE and BOGLE were purely accidental, and he gave the Jury to believe that meeting and seeing these men there was a mutual and immediate recognition on both sides. Now, let me see what he swore. First, with reference to GUILFOYLE. He swore that he first met him accidentally in King-street, and immediately recognised him, and was in turn recognised by him and his wife, and he denied altogether that GUILFOYLE called on him to see him. I call your attention particularly to this, because I will show you how absolutely he is convicted, under his own hand of falsehood in this respect. As to BOGLE, he swore that the name was never mentioned to him by anybody till he saw him for the first time in the Archway at the Metropolitan Hotel. He swears also with regard to CUBITT that he had not seen him at all for some weeks after his arrival in Sydney. The objects for which these statements were made are obvious. He wanted to establish by his oath that there was an immediate recognition of him by GUILFOYLE and his wife. As regards BOGLE, he wanted to make out that the same sort of recognition had taken place, and that he had never heard of his name until he saw him at Sydney. The object as to CUBITT is plain enough. He wanted to make out that he had not got any information from him until after he had seen GUILFOYLE and BOGLE. The Defendant professes in his affidavit to answer a letter written by GUILFOYLE and addressed to Mrs. GREENWOOD. In that letter GUILFOYLE says—

Dr. KENEALY: I understood your lordships to have ruled that that letter was not evidence of anything it contained.

Mr. Justice LUSH: It is used now in order to explain the Defendant's affidavit.

Mr. HAWKINS: If the Defendant, in his affidavit, says GUILFOYLE is telling a wilful untruth, I must know what GUILFOYLE has said to show that the untruth was that of the Defendant.

Mr. Justice LUSH: We ruled that GUILFOYLE'S letter must not be taken as true, and that the Jury must not accept its statements as statements upon oath.

Mr. HAWKINS: Quite so; but whatever the Defendant says about that letter is evidence against him.

Dr. KENEALY: That is not disputed; but Mr. HAWKINS proposes to read the letter as containing facts.

Mr. Justice LUSH: He proposes to read the letter, in order to explain the Defendant's statement in regard to it.

Mr. HAWKINS: If it had not been that the paragraph itself was insisted upon I should not have dreamt of offering a mere letter as evidence. The Defendant wanted to make out that he had been recognized by GUILFOYLE, an old servant, who had actually come and offered him all sorts of kindnesses upon the supposition that he was the real and true man. GUILFOYLE,

* Abbe SALIS, in his evidence, *Trial*, Vol. 1, page 24, swore that a true Catholic could use the expression "May the Blessed MARIA have mercy on your soul." How could the Protestant ARTHUR ORTON know this?

in his letter, says that he had learned that a man, who had been known at Sydney as CASTRO, had made use of his name in England, and had stated that he had identified him as being the long-lost ROGER TICHBORNE, which he characterized as a gross falsehood, and for the purpose of proving that it was, GUILFOYLE goes on to say that he read a paragraph in the 'Sydney Morning Herald' which said that the long-lost ROGER CHARLES TICHBORNE had been found, and that he at once repaired to the public-house at which it was stated he was staying, anxious to see a member of the old TICHBORNE family with whom he had lived, but that he did not recognise in CASTRO the features of the ROGER TICHBORNE whom he knew at Tichborne in 1846 or 1847. GUILFOYLE put several questions to him, the answers to which suggested to him that he might be an impostor. He did not recollect the name of GUILFOYLE; he seemed to know nothing of his principal relatives; and he had no knowledge of such a remarkable person as BOGLE. CASTRO, writes GUILFOYLE, did not even know there was a Sir JAMES and Lady DOUGHTY. It is clear he had not seen BOGLE at that time. The Defendant says the statement of GUILFOYLE in that letter is untrue, and the account which he gives is that he was walking through King-street, Sydney, about ten in the morning, when GUILFOYLE and his wife passed, and that she immediately turned round and said, loud enough to be heard, "That is him"; that GUILFOYLE then came up, and asked him if his name was TICHBORNE, to which a reply was given in the affirmative, and, in reply to another question, if he knew a person of the name of GUILFOYLE, he replied that he did. There you have two statements diametrically opposite. GUILFOYLE says he called on Defendant at the hotel. Defendant says, "It is no such thing; we met in the street, and there was an immediate recognition." Which is the true version of this story? On July 24th, the Defendant writes from Sydney:

"MY DEAR MAMMA,—I received your letter yesterday morning, and was somewhat disappointed you did not acknowledge me as your son. Surely, my dear Mamma, you must know my writing. You have caused me a deal of trouble, but it matters not, as I have no wish to leave a country where I enjoy such good health. I have grown very stout. (Laughter.) Yesterday one of Uncle EDWARD'S old servants called on me. He been living here a long while. He is named GUILFOYLE. You must remember him. He was remodelling the garden when I was staying at Tichborne with my uncle. He knew me as soon as he saw me. His wife was with him. She looks very young yet, and yet she has eleven children."

(Laughter.) So far, therefore, from his meeting GUILFOYLE accidentally in the street, I have a contradiction under his own hand. I pass now from GUILFOYLE * to BOGLE. As to him, the Defendant said, "His name was never mentioned until I saw him for the first time in the archway of the Metropolitan Hotel." Yet in this same letter he had written, "You spoke of BOGLE in your letter to CUBITT. I have made inquiry, but cannot find him." What becomes of the Defendant's oath that he had not even heard the name till he saw BOGLE? Why, their own Witness, BOGLE himself, told you that when he saw the Defendant he produced from his pocket a letter in Lady TICHBORNE'S handwriting, and said if he had not met BOGLE he should have advertised for him. As regards CUBITT, his object is to make out that he could have given him no information, and he says that he was some weeks at Sydney before he saw CUBITT. Now, we know from the letter he wrote back to Mr. GIBBES, that he arrived in Sydney somewhere about the 18th June. In that letter he says, "I have seen FORD. He is going to see CUBITT." So that you see the first thing he does is to try to bring FORD into communication with CUBITT. On the 23rd of the same month he had actually seen CUBITT, as was shown by his letter to his mother, in which he said he had found CUBITT a very different person from what he had represented to her in his last letter, and that he had every reason to be pleased with him, and the way in which he had inquired for him. That is as early as the 23rd of June. There is a letter of Mr. CUBITT'S himself to Lady TICHBORNE, in which he shows that the interview was before the 22nd of June, for he says, "After a long, anxious, tedious, and expensive search, I have at length succeeded in discovering your son, who, as you will learn from him, is now in Sydney, and with whom I have now had several interviews." We know that the Defendant's interview with BOGLE was not till late in August. On the 20th of July all the business which Mr. CUBITT had to transact with the Defendant was at an end, because on that day there is that certificate signed "R. C. D. TICHBORNE, baronet." He says, "Prior to my departure for England to take possession of my estates I desire to place on record my high appreciation of your search after me." So that upon all these three points I have the Defendant's oath directly contradicted by the writing of himself, written at a period when he little thought the importance which would be attached to dates. Certain it is that from the time of the first interview with BOGLE the Defendant's knowledge of all that related to the TICHBORNE family estates grew with great rapidity. I pray your attention to this, because it is most important that you should notice the amount of ignorance displayed by the Defendant during the early part of his putting himself forward. I don't care what amount of knowledge he displayed later on, if I can show you that the man in January could not answer the commonest questions—that he does not know the name of the lady he called his mother; that he has no knowledge at all of the property he says he is entitled to; that he does not know where the man whom he is personating was at school; that he knows nothing of his army life—if I find that complete and absolute ignorance on the 1st of January, and I find that afterwards in the month of June, having been within that six months in the company of a man who could give him information, he is able to tell me many things of which he was ignorant in January, what would be the irresistible inference for me to draw? Why, that he has learned them somewhere. You will find that that is the key to pretty nearly the whole of the Case. If you will bear steadily in mind the absolute want of knowledge on the part of the Defendant of all that appertained to ROGER TICHBORNE'S life during the first few months after his being put forward as the Claimant to the Tichborne estates, you will find it will give you a very sure and safe key to the conclusion at which you are to arrive. If you will bear that in mind it will save me and yourselves a great deal of labour, because I will not then find it necessary to go through all these matters which the Defendant professes to have recollected afterwards. It is for this reason that I am dwelling particularly upon this period of the Defendant's history. Now, bear in mind, until BOGLE was seen, the name of Upton had never been mentioned by the Defendant—Upton, the favourite residence of Lady DOUGHTY—Upton, the place which had given such anxiety to ROGER TICHBORNE that, if you look at his correspondence, it seems ever to have been uppermost in his mind—Upton, the place which as early as 1849 he had spoken about to Mr. GOSFORD. It was the place he had so resolutely refused to sell, or to allow his uncle or father to sell in spite of all their urgent importunities. Upton was where ROGER TICHBORNE had spent some of his happiest and some of his latest and loneliest hours. ROGER TICHBORNE forget Upton! Is it possible he could forget Upton, and that he could at the same time remember the Wymmering estate, which never existed as an estate of the TICHBORNE family, or the property in the Isle of Wight, which, again, as TICHBORNE property, had no existence? I say it is absolutely incredible that ROGER TICHBORNE could have forgotten it. Yet up to the time when he saw BOGLE he seems never to have mentioned it, and up till that time, I think, the name of Sir EDWARD and Lady DOUGHTY had never crossed his lips.

The LORD CHIEF JUSTICE: GUILFOYLE said he mentioned the name of DOUGHTY in connection with the property.

Mr. HAWKINS: Yes; that appeared in the paragraph in the 'Illustrated London News'; but that he spoke of Sir EDWARD or Lady DOUGHTY before he arrived at Sydney I don't find any trace, and certainly the TICHBORNE and DOUGHTY crests in combination were unknown to him.

The LORD CHIEF JUSTICE: Does that appear?

Mr. HAWKINS: BOGLE in his evidence states that the Defendant within a day or two of his arrival in Sydney showed him a ring which he stated that he had had expressly engraved with the TICHBORNE crest alone upon it. If your lordship questions it, I will look for the reference. *I have looked at it, and I also looked at the Baronetage for* 1866, *and I find, curiously enough, that the* TICHBORNE *crest alone forms the heading to the letterpress description of the baronetcy. It is quite true that there is a foot-note stating that the* TICHBORNE *family are entitled to use the* DOUGHTY *crest.*

Dr. KENEALY: Mr. HAWKINS is telling the Jury about something which he found in some book. Surely this is not admissible.

Mr. HAWKINS: I don't know how many works were read by the Defendant's Counsel.

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* That GUILFOYLE was convinced that the Defendant was ROGER TICHBORNE, the following letter, written by him, will show:

M. GUILFOYLE TO SIR R. TICHBORNE.

To Sir ROGER TICHBORNE,

Monday Evening.

SIR,—I am delighted to know that you have received a letter from your Mama. I trust that she is in the enjoyment of good health and that affairs at home are in as prosperous a state as you would wish. I shall be very happy indeed to have an hour's conversation with you as soon as you can find it convenient to call out and see us. In conclusion I beg to thank you most kindly for the true sentiments expressed in your note, and believe me, Sir ROGER, yours most sincerely,

M. GUILFOYLE.

We, the undersigned, hereby certify that we have examined the above writing with the original letter of which it purports to be a copy, and attest the same to be a true copy thereof. Dated this Twelfth day of August, 1868.—HERBERT DAVIES, A. M. C. SCOTT, Clerks to Messrs. LEVY and DE LISSA, Solicitors, Sydney.

Mr. HENRY MILFORD, an Attorney practising in Sydney, made an affidavit, dated April 9, 1866, from which we extract the following paragraph: "I saw the said MICHAEL GUILFOYLE on several occasions . . . . when he expressed to me *his perfect confidence that the Plaintiff was the rightful heir to the Tichborne Estates.*"

Dr. KENEALY: Well, why didn't you object to them? I object to your telling the Jury the effect of what you have read in some Baronetage.

Mr. Justice LUSH: I thought that it was in evidence.

Dr. KENEALY: Oh, no, my lord, it was not.

Mr. HAWKINS: I don't know whether it is or not.

Dr. KENEALY: Well, I will tell you—it is not.

Mr. Justice LUSH: The single crest appears in the 'Illustrated London News.'

Mr. HAWKINS: BOGLE in his evidence says: (Vol. V. page 120)

"He showed me the ring. I looked at it, and said, 'Yes, that is the TICHBORNE crest.' He said, 'I had this made in Sydney.' I have since seen him wearing it on his finger. He did not say why he was wearing it, nor how he had got it engraved. He did not tell me anything about it. It was the TICHBORNE crest—the TICHBORNE crest alone. I am sure of that. The reason I took my little book next day with me was because I thought the crest was done neater than was his ring. He took a leaf from the book."

Gentlemen, you know what the book contained—it contained the DOUGHTY and TICHBORNE crests combined. BOGLE also had some woodcuts of Upton, and he had, moreover, the little silhouette likeness of Sir EDWARD DOUGHTY,* all of which were produced by him, and shown to Defendant immediately after the first interview. As soon as the Defendant had possession of this note-paper and the woodcut and the silhouette likeness of Sir EDWARD, then he immediately wrote to Mr. COTTEE, at Wagga-Wagga, who had evidently doubted his identity. He says:

"This leaf is taken from a book which my uncle's valet has. His name is BOGLE, who has also a woodcut of Upton, a seat of my uncle, Sir E. DOUGHTY, in Dorsetshire. As you doubt my identity, I will send you a copy of my uncle's likeness, and when you see the one you see the other—I mean myself."

But when Mr. COTTEE doubted his identity at Wagga-Wagga why did not the Defendant say, "My uncle's name is Sir EDWARD DOUGHTY?" Why did he not describe his seat at Upton, in Dorsetshire? It was not until BOGLE had seen him that he mentioned the name at all of Upton or Sir EDWARD DOUGHTY to Mr. COTTEE. From that time he seemed to have gathered fresh stores of knowledge. For the Defendant's purpose there certainly was no man on the face of the earth who could have been more useful to him than old BOGLE. He was introduced to your notice by the Defendant's counsel as "a man from whose countenance, though a negro, the light of truth beamed." One would have thought that under the broad canopy of heaven—(laughter)—there could not be a grander description, even by old BOGLE! of ROGER TICHBORNE. "He is," said the Defendant's Counsel, "one of those negroes described by the author of 'Paul and Virginia,' who are faithful to the death—true as gold itself. If ever a Witness of truth came into the box, that Witness is BOGLE!" Well, you have seen him—what do you think of him? Old BOGLE? (laughter.) Did you ever see a better specimen of what I call feigned simplicity than old BOGLE presented? I do not like, as a rule, to abuse whole classes of men, but I cannot forget there are some portions of the negro race who are not proverbial for truth. Certainly old BOGLE† is not to my mind very likely to dispel any unfavourable impressions at present existing against them. (A laugh.) He could not fail to have been useful to the Defendant, as he had been for many years in the service of Sir E. DOUGHTY, and after his death a short time in the service of Sir JAMES TICHBORNE. The Dowager Lady TICHBORNE was aware that BOGLE was residing in Sydney, because I have read you a letter from her describing him as quite black, and as being able to tell a great deal about the family in which he had been a valet. This information Lady TICHBORNE sent to CUBITT, and it was beyond all question communicated to the Defendant. BOGLE says he had a letter from Lady TICHBORNE in his hand, and we know that Defendant had been making anxious enquiries after BOGLE. After GIBBES had left Sydney, and after the telegrams, in answer to which the Defendant displayed such gross ignorance, and the statutory declaration was made, it was then, according to BOGLE'S account, he met the Defendant in the yard of the International Hotel, when there was an instantaneous and immediate recognition. Let us see how this recognition was brought about. In spite of the Defendant's deliberate oath to the contrary, there is no doubt he was well aware of the fact that BOGLE was in Sydney, that he knew BOGLE was black, and that he was a servant to Sir EDWARD DOUGHTY. BOGLE also knew that ROGER TICHBORNE had been advertised for, and he knew that the Defendant was in Sydney in that name, and when he called upon his friend the landlord at the 'Supreme Courts Hotel' he ascertained in the course of conversation that the Defendant was staying at the 'Metropolitan Hotel,' where the landlord had seen him on the previous day. On inquiring at the bar of the 'Metropolitan Hotel' on the following morning, BOGLE was informed that Sir ROGER was staying there, that he was then out, but that he would return about twelve o'clock. He waited till that hour, sitting in the courtyard, and at last, with tolerable punctuality, the Defendant arrived. The Defendant crossed the yard from the billiard-room, and as he was doing so, BOGLE says, there was this mutual recognition.

Mr. Justice LUSH: Does he say that?

Mr. HAWKINS: Yes.

Mr. Justice LUSH: He says the Defendant came up and said to him, "BOGLE is that you?"

Mr. HAWKINS: "I said," BOGLE adds, "Yes, Sir ROGER, how do you do?" There was BOGLE, sitting in the yard and evidently waiting for somebody; and the Defendant, who knew that his uncle's valet had been a black, on seeing him said, "BOGLE, is that you?" Thereupon BOGLE said, "Yes, sir," and smiled, and that is what took place at that time. A minute or two after BOGLE was sent for to the Defendant's room, and then occurred an interview and conversation which was ten thousand times more extraordinary than what immediately preceded it. "I called," said BOGLE, addressing the Defendant, "to see Mr. ROGER TICHBORNE; you are not him?" The Defendant replied, "Yes, BOGLE, I am; you allude to my size, I am not that slender lad I was when I left Tichborne." Fancy that. They talked, says BOGLE, together for half an hour, and there was not, during the whole of that time one single syllable breathed about either Sir EDWARD DOUGHTY, or Lady DOUGHTY, or Miss DOUGHTY, in whose service you know BOGLE had been, and there was not the least allusion made to either ROGER TICHBORNE'S father or mother. BOGLE says that some question was put to him about the reason of his leaving Tichborne, and that upon his saying that he left in consequence of the wish of the steward, the Defendant asked him if he meant GOSFORD, thereby showing, it is said, that he knew GOSFORD. At the last Trial, BOGLE said, "The Defendant asked me why I left, and I told him that Mr. GOSFORD suggested it"—a very different story from the other. Picture to yourselves ROGER TICHBORNE, who was supposed to be drowned, meeting old BOGLE, the servant of Sir EDWARD DOUGHTY, and not asking him one solitary question about Lady TICHBORNE, except whether he knew her handwriting in a letter which he produced. Why on earth should ROGER TICHBORNE ask old BOGLE if he knew his mother's handwriting?

The LORD CHIEF JUSTICE: May it not have been to satisfy BOGLE that the letter was a genuine one?

Mr. HAWKINS: I submit that it shows that he did not know Lady TICHBORNE'S writing. Fancy his asking no questions about Sir EDWARD DOUGHTY, Lady DOUGHTY, and Miss DOUGHTY—his uncle, his aunt, and his cousin—when he asked questions about BOGLE'S wife and sons, Mrs. MARTIN, the GUYS, and BRAND, the gamekeeper, who went about shooting rabbits with him! Is it possible for ROGER TICHBORNE, who had been lost for twelve years and who was known by BOGLE to be a great favourite with his uncle, and to have been a constant visitor of theirs, to have met BOGLE without BOGLE putting to him all sorts of enquiries? Would not BOGLE have said to the nephew of his old master, "Tell me all about your adventures; tell me all about the wreck." Why, the days would have been too short for all that would have had to be told. All that was said on the subject of the shipwreck is this—"He told me," says BOGLE, "that he had a wonderful time for some days;" and he says that from that hour up to the moment of his giving evidence in that box before you he never had a single moment's conversation about that wreck with his old master's nephew, whom he had met with under such extraordinary circumstances. Does not that pass the bounds of credibility? BOGLE, when discovered, was the very man to suit the purpose of an impostor, because through having been in Sir EDWARD DOUGHTY'S service he had gained important family information. He says, "I could have given him plenty of information, if he had asked me questions." And do you think that he did not ask him questions? He was acquainted generally with the Tichborne property; he was acquainted with the fact that Upton had been bought, and had woodcuts of it; he knew perfectly well the house of Sir EDWARD DOUGHTY; he knew the names of Mr. GOSFORD and the old tenants; and he knew, moreover, that Sir JAMES TICHBORNE and Sir EDWARD DOUGHTY when in town usually stayed at FORD'S Hotel, Manchester-square. It would be difficult to find a more useful person for the purposes of an impostor, and hence you find the Claimant entering into negotiations with the view of bringing him with him to England, under circumstances to which I will call your attention.

[The Court then adjourned for lunch.]

After it had re-assembled,

Mr. HAWKINS continued: Gentlemen, I won't trouble you with the two or three meetings which took place between BOGLE and the Defendant before they embarked; but there are one or two points connected with BOGLE'S coming to England that seem to me to demand a little attention. The fact of the Defendant's bringing BOGLE to England appears to me in itself calculated to excite grave suspicion. Why should the Defendant for services rendered voluntarily have transported BOGLE and his son to this country? Why should BOGLE have lived with him at Sydney, as he says he did in his note to COTTEE?

The LORD CHIEF JUSTICE: BOGLE denies that.

Mr. HAWKINS: We have the Defendant's statement that he did.

* A copy of this likeness appears in the INTRODUCTION, page 145.

† See COCKBURN'S opinion of BOGLE given in his Summing-Up on February 10th. Mr. HAWKINS' comments on him are not worthy of any notice.

The LORD CHIEF JUSTICE: BOGLE says that he never lived with him for an hour.

Mr. HAWKINS: They contradict each other. I don't know whether there I am to use it as a fact or as an absolute falsehood on the part of the Defendant; or whether there is a particle of difference between those two Witnesses. But I ask why on earth did the Defendant transport old BOGLE and his son to England, unless it were that he was a man who was fitted to communicate to him knowledge which he required? I can understand that in that way he might derive from his presence considerable advantage. There is another thing which strikes me as odd. You all remember what correspondence took place between Lady DOUGHTY and ROGER TICHBORNE up to what I say was the close of ROGER'S life. Why did not the Defendant himself, if he were ROGER TICHBORNE, write with his own hand to Lady DOUGHTY, to communicate to her the fact that he was about to return to England? I pause to ask if you can answer that question. Is an answer capable of being given to it? Thousands of letters had passed between Lady DOUGHTY and ROGER TICHBORNE. Why was old BOGLE to be the medium of communication? Do you think that if ROGER TICHBORNE had been at Sydney, and had made up his mind to return and claim his estates after having been lost for twelve years, he would not have written himself to his most constant and most affectionate correspondent? Do you think he would have got JOHN BOGLE to take pen in hand and write to her? I wonder whether the Defendant's reasons for this are the same as that which led him to get the schoolmaster at Wagga-Wagga to write the letter to Mr. RICHARDSON at Wapping? Was he afraid that if he wrote to Lady DOUGHTY she would on seeing the letter instantly say that the handwriting was so unlike that of ROGER TICHBORNE that he could not be the man? But again, why did he encumber himself with a useless secretary in the person of young BUTTS? These are questions, gentlemen, which you must ask yourselves. Here, as in the case of the silence with regard to the shipwreck, if the Defendant is regarded as an artful impostor endeavouring to obtain information, the thing is intelligible enough. Then the Defendant had nothing to do but to learn, and he set himself most diligently to work to learn. In the conversations which took place between him and Mr. HODGSON on board the 'Rakaia'* he told Mr. HODGSON that BOGLE had been a sort of family gamekeeper; and there was some truth in that statement. He was enabled to show that gentleman a photograph of Tichborne House. He likewise directed attention to a picture of a pony which he said he used to ride as a boy; though old BOGLE, when examined, said he thought it was not ROGER'S pony, but that of a little son of Sir EDWARD DOUGHTY, who died at an early age. The Defendant also spoke of his long rides in South America, never mentioning the journey across the Cordilleras. He told Mr. HODGSON that he was going to claim his estates, and as an excuse for his long silence he said that he would never have left Australia for that purpose had his brother ALFRED lived. There I fix him with a deliberate falsehood. You know, gentlemen, that ALFRED did not die till the 22nd of February, 1866. It was in the year 1865 that the Defendant first commenced his claim: on the 17th of January in that year he wrote a letter to Lady TICHBORNE, stating that he was going to trust himself to the sea once more; and yet he ventured to tell Mr. HODGSON, as a reason for his long absence, that he was so very fond of ALFRED that he would not have returned but for his death. You remember that when he got news of ALFRED'S death he was seen by Mr. GIBBES weeping behind a tree.

The LORD CHIEF JUSTICE: We have not seen the picture of the pony which you mentioned just now.

Mr. HAWKINS: We have not been able to get it. There is another thing connected with the voyage which shows that there must have been a tolerably good understanding between BOGLE and the Defendant. They went on board the 'Rakaia' from Sydney to Panama, and made a long stay there; from Panama they went to New York, and they stayed there for some time; and BOGLE says that they only met three or four times before they met at Alresford. Do you believe that? Is it not one of those things that stamps the whole story as absolutely incredible? If you want to test a story of that kind, it is best to do so by one's practical experience. Would any of you, under such circumstances, have had no conversation with the old servant of the family? Again, how should ROGER TICHBORNE have known anything about the pilot of the Dundee boat? He was never at Wapping, so far as we can judge, in his life. How should he have known anything about FERGUSSON? Why should ROGER on arriving at the Victoria Dock have gone to FORD'S Hotel? The Defendant did not want that hotel as a place of residence, for he quickly went down to Gravesend, and it was old BOGLE who first suggested that they should go there. Then how very odd it is that, having got to FORD'S Hotel, the Defendant never saw old BOGLE there at all. Without even staying to rest after the fatigues of his journey, ROGER TICHBORNE went off to Wapping. How he should have known the old No. 69, or what he knew about Mrs. MCFARLANE and the public house, I can't understand. What should he know about CRONIN'S shop, or about SOPHY EAST, or about the house in the "Nook," or the old '42? What should ROGER TICHBORNE know about these things, and why should he go posting down there at that late hour of the evening of the first day of his arrival? It is a question you must ask yourselves. I deal now with the first few months of his arrival in England, and it seems to me that the events of the first few months are the most essential things for your consideration in the whole Case. As I said, I care very little for what follows. I shall not care when I come to deal with that part of the Case whether the Defendant talked to old WALSH about his grubbing up the old oak, or about his wheeling barrow loads of stones up a plank for the purpose of filling in the cairn. What I want to know is, what did he know of ROGER TICHBORNE when he arrived in England? My answer is only this—he knew nothing? Whatever he knew afterwards must of necessity have been acquired. Now, gentlemen, just let us see what the unquestioned position of ROGER TICHBORNE was. Was there anything to excuse him for his omission to make his way to the house of some relative or other? When he left England in 1853 he had not done anything in the world. He had not one single enemy among them. He had friends in abundance—a wide circle of them. Listen to what BOGLE says. He says he was a favourite everywhere he went. Between 1853 and 1866 there is no doubt that death had removed some of his relatives, but yet there remained Lady TICHBORNE, Lady DOUGHTY, and Lady RADCLIFFE. There were two uncles nearer his own age—HENRY and ALFRED SEYMOUR; and then there were Colonel and Mrs. GREENWOOD, and a great many others; and last, but not least, Mr. and Mrs. GOSFORD, to say nothing of the whole set of his brother officers, whose feelings were quite unchanged towards him. Not a single circumstance could arise in his mind that could make him doubt whether he would have been welcomed on his return home. BOGLE says that he told the Defendant there were many people in England who would have been glad to see him after his long absence. Can you account for this conduct? Test this by your own experience, and just picture what you think, from your knowledge of ROGER TICHBORNE and your knowledge of the feeling of his friends towards him, he would have done, and having drawn that picture think for yourselves of all the Defendant did. Was there one portion of the Defendant's conduct after his landing in England; was there one single thing that he did; was there one single word that he spoke; one single action that you can attribute to the real ROGER TICHBORNE had he arrived at home? I confess I am at a loss to find a single one. His acts were the acts of a man afraid to show himself to ROGER TICHBORNE'S relatives. They were the acts of an Impostor, and an Impostor who had to learn the part he was to play. His words were the words of a man who betrayed a most fatal ignorance of all that appertained to ROGER TICHBORNE. Look at his seclusion at Gravesend. Why go to FORD'S Hotel one day, and then in the early morning of the next day, without saying anything to BOGLE, go to Gravesend? He gives his own explanation—to keep out of the way until such time as he could see his mother! He avoided every member of the TICHBORNE family, and he avoided Lady TICHBORNE.

Dr. KENEALY: That is not so. He says that he enquired at the hotel for his mother, and that she was not there.

The LORD CHIEF JUSTICE: No; one of the waiters said she was in lodgings in Beaumont-place.

Mr. HAWKINS: I am very much mistaken if the Defendant did not say it was his intention to go to Paris.

The LORD CHIEF JUSTICE: No doubt. He says he started to go to Paris, but one of the waiters told him she was at Beaumont-place, and that he went there but found she had gone.

Mr. HAWKINS: That is his statement, only his statement, and I will follow the example of the Defendant's Counsel, and ask you to treat it as all moonshine. (Laughter.) I say he avoided her, and I will tell you why. At all events, if he is speaking the truth, he ascertained on the 25th of December that she was not here, and ascertained she was not in Paris. Why did he not go to Paris then? He is asked, and he says it was for want of

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* Sir ROGER TICHBORNE embarked from Sydney in September, 1866, on board the 'Rakaia,' bound for Panama. The 'Rakaia' called at Wellington, New Zealand, and the Claimant went on shore and enquired for Mr. FREDERICK WELD, Prime Minister of that colony, whom he had known in former years in England; but, finding that he lived at a considerable distance, and that the duration of the ship's stay would not allow him to go so far, the Claimant wrote him a letter, mentioning his disappointment in being unable to see him, and that he was on his way to England. Mr. WELD wrote a letter to him and addressed it to Tichborne Park, and it was received by the Claimant soon after his arrival in England. It is as follows:—

"Brachenfield, Canterbury, New Zealand,
"October 17th, 1866.

"MY DEAR TICHBORNE,—Many thanks for your note. I have often thought of you since we last met, and wondered if you were alive. I hope you will keep up the credit of the Dole. I shall most probably return to England in a year or so, when perhaps we may meet at Tichborne. In the meantime, believe me, yours very truly,

"FREDK. A. WELD.

"P.S.—I am very glad you took BOGLE home; remember me to him.

"Sir R. TICHBORNE, Bart., Tichborne."

money! And yet he could keep useless old BOGLE—(laughter)—at FORD'S Hotel all the time; he could afford to go and take his family down to the Clarendon Hotel, at Gravesend; he could afford to go to Alresford, and spend two or three happy days with his friend ROUS; and he could afford to treat old BOGLE to a nice little tea there; he could afford to go back himself to Gravesend; and he could afford to employ, what is usually a very expensive luxury, an attorney, in the shape of JOHN HOLMES. What is the cost, even first-class, to Paris to see his mother, who has been waiting for twelve years to clasp him to her arms? Three pounds three! (Laughter.) Why it would have taken him there and back again! Want of funds! My dear mamma, could you lend me half-a-crown to make up the money I shall require? (Laughter.) What childishness to suppose that this miserable excuse could go down with men of common sense. I ought not to say that I have no doubt what his intentions were, but I will say that you have no doubt that the whole of the miserable farce between his arrival and the 10th of January, when he did go to Paris, that the whole of the period was spent usefully and profitably in gaining information that he must have had to satisfy even that poor deluded creature, Lady TICHBORNE. Let us look at his mode of procedure. He went to Gravesend and left his family there, and the first visit he paid was to Wapping * to see how the land lay there. He got all the information he could in that locality, and the next thing was to take a stealthy visit to Alresford. I cannot help thinking that there was somebody all this time who was rendering him assistance. Possibly as I go on it may suggest in itself who the persons were. But we know that on the 28th of December, the Defendant went down alone to pay that extraordinary visit there. We have it in evidence that during the autumn it had been rumoured in Alresford that ROGER TICHBORNE was coming back, and it had been moreover rumoured that this ROGER TICHBORNE was much stouter than the ROGER TICHBORNE who went away, and the people were prepared to see a stout ROGER return after twelve long years of absence. I am taking this on the supposition that this man is an impostor. If he had gone down ostensibly as ROGER TICHBORNE, and had said, "Here I am. My name is ROGER TICHBORNE; let anybody who wishes to talk to me come and do so;" I dare say he would have had many very unpleasant inquiries put to him, and therefore what he did was this. He went down and managed to let it be known, through ROUS, that he desired to preserve an incognito at Alresford, and the effect of that would be that people would look at him and say, "Ah, that is Sir ROGER; we knew he had grown very stout; he don't want to be known. Don't trouble him. This would keep a sort of guard around him, but it would not do quite. He must have some assistance there, and having gone down to the 'Swan Hotel,' which was kept by ROUS, he very soon obtained what he wanted. You recollect he had R. C. T. on his portmanteau all right, but that was not enough. He had ROUS in and talked to him over a glass of brandy and water and a cigar, and at last ROUS almost knew him, and one day in the course of conversation said, with a sly wink, "You are Sir ROGER. Well, I suppose you would like to see the old place again? I am going to drive round there, will you come with me?" So on the following morning there he is in ROUS's cart looking in at the dairy window—at old Mrs. NOBLE; and although he was muffled up in this thick coat and the cap and the muffler he had worn when he went to Wapping, yet Mrs. NOBLE said, "As I looked at him I thought he was very like the TICHBORNES." It is true she was not quite certain. She was a little timid about it. She did not rush out and say, "Why, you are Sir ROGER." It is clear that if he knew her he did not nod to her and say, "How are you, Mrs. NOBLE?" or anything of that sort. Well, having gone round the village, he came back to ROUS's and started out alone. During that walk he met with a respectable-looking blacksmith named ETHERIDGE, whom the Defendant says he reminded about the cats; but he got hold of the wrong story about it then. So he did with LEWIS, who, you may remember, said he had been introduced

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* THE CLAIMANT'S VISIT TO WAPPING.

It is the general belief that Wapping was the first place the Claiment went to on his arrival in London. This is not the case. He went first to Beaumont Street, where, he was told, his mother resided, but found that she had gone to Paris. Now we should suppose that before taking this risky step he would have had long and anxious consultation with BOGLE, and would have been accompanied by the latter to countenance and support the part he was playing; but no—the "clever rascal" goes alone, just as he came from his journey, expecting, of course, that she would recognize him at once. Think what a terrible ordeal the first interview with Lady TICHBORNE must have appeared to him, and yet we see him ready to encounter it, no shying, my lord, and without any previous preparation or communing with his confederate. Surely this is greatly in the man's favour. I may be told that we have only his bare assertion that he went to Beaumont Street. I refer my objector to Lord COLERIDGE'S reply to the Claimant on his saying that he did not go to Wapping the first thing on his arrival: "Well I know you went to FORD'S Hotel and other places first." How did his lordship know? From the report, I infer, of the Detective employed to watch the Defendant and who followed him to Beaumont Street and Wapping. The Claimant's visit to Beaumont Street never came to the notice of the Lord Chief Justice, who, of course, assumed that he went first to Wapping. This point in the Claimant's favour was thus, unfortunately, lost. Now with regard to the Wapping episode, his lordship says: "According to the Defendant's account, he went there because he wanted to make inquiries about the ORTON family, partly because ARTHUR ORTON had asked him to get information on the subject, and partly because he had promised ARTHUR ORTON to assist the ORTONS in case they should be in indigent circumstances and required pecuniary aid. What would you have expected a man to do under such circumstances? Instead of starting at night and going to Wapping in the dark to make enquiries, would it not have been abundantly sufficient for him to have gone there the next day? You must, of course, look at these things with the eye of reason and common sense. If the Defendant went to Wapping immediately on his arrival in this country, would it not be in consequence of some more pressing motive than a mere desire to perform an act of friendship?" "You know what a queer fellow he is," says MOORE to THOMPSON, speaking of ROGER; and everyone, who has read with attention the evidence given in the two Trials, will admit that this description was a true one. Well, seeing what ROGER was, would anyone, who looked at his actions "with the eye of reason and common sense," deny that his going to Wapping for the reason alleged by the Claimant, and all his inexplicable manœuvres were in perfect keeping with his character? It is, on the other hand, inconceivable that ARTHUR ORTON should have acted in the strange manner he is said to have done. There must have been always present to his mind the danger of some of his family or neighbours, who knew him when a boy, recognising him, and it was a most singular way of averting this danger to go into a public-house in proximity to his father's house, and comport himself in such a manner as to make Mrs. FAIRHEAD and her daughter conclude that he was the missing ARTHUR ORTON. According to their account, he showed a greater familiarity with Wapping than they possessed, and brought up without hesitation or being called upon to do so, the names of MACFARLANE, WARWICK, SCHOTTLER, CRONIN, SOPHY WARWICK, GOSHERON, and others, all inhabitants of Wapping and acquainted with his family. The following is a singular passage of Mrs. FAIRHEAD'S evidence: "What did he say after you told him MARY ANN was married?—He asked could I oblige him with her address? I said I could send to her brother CHARLES for the address—he lived a few doors off—in Hermitage-street, at the top of Globe-street." "The Lord Chief Justice: Was he carrying on any business there?—He had a butcher's shop there, my lord." "Mr. HAWKINS: what did he say when you mentioned CHARLES?—He said he did not want him." Could this be ARTHUR ORTON? It is obvious that the co-operation of his brother CHARLES was as essential to the furtherance of his scheme as that of his sister and to proceed with it without securing his silence was to ensure a prompt exposure of their relations. But even if his brother's and sister's fidelity could be depended on, there remained a host of people in Wapping, who had known him in his youth, much too numerous to be gained over. This must have presented itself to ARTHUR ORTON'S mind, and it is incomprehensible how he should have acted in the manner described. Mrs. FAIRHEAD says she went out and procured MARY ANN'S address. Where did she procure it? Was it from CHARLES, to whom she told the Claimant she could send, and who lived but a few doors off? We should expect that she would post off to him with the glad tidings that ARTHUR the wanderer had come home to roost—and that CHARLES would rush back with her and throw his arms round him, exclaiming, "You are—yes! you are my long lost brother." This affecting scene, to our great loss, was not enacted; nor, so far as I can make out, was any communication made by Mrs. FAIRHEAD to CHARLES; neither does it appear that these two chattering dames, with such food for gossip as they never met with before in their lives, spread the surprising news, or, to use their own expression, rumoured the rumour, of slobbery ORTON having made his reappearance. We need not go far to seek the cause of this mystery. The old woman admits that shortly after a thin gentleman, in WHICHER'S company, called on her with a number of photographs, and that she and her daughter went to DOBINSON and GEARE'S (PITTENDREIGH'S employers) and gave an account of the Claimant's visit. The trail of the Detective is over their evidence, and we need not take the trouble to pursue the matter further. I have, however, a strong suspicion that she did get the address from CHARLES, but never said a word of the Claimant being his brother, for the simple reason that he never did or said anything which could give birth to such an idea. I have one final remark to make. Although the Claimant's opponents give him the character of a consummate scoundrel endowed with commensurate cunning, cut out, in short, for a detective, yet—with marvellous inconsistency—they represent him, throughout the piece, as committing himself in a way which FAGAN'S rawest pupil would have been ashamed of.

AMICUS VERITATIS.

to ROGER by Miss DOUGHTY as "her cousin from Paris." ETHERIDGE said he met the Defendant as he was going up from Tichborne to Alresford, and what do you think the Defendant did? He asked old ETHERIDGE the way to Tichborne! Do you think ROGER TICHBORNE would have found it necessary to ask the way to Tichborne? He asked old ETHERIDGE his name—the Defendant says he knew him. He tried to coax him to talk, but the old man would not have it. He gave the old man sixpence, and the old man went and got shaved, and probably got a pot of beer. He met the Defendant on the way back, and there ensued a very short, decisive conversation. He says ETHERIDGE recognised him. So far from recognising him, I should say it was the other way. This was the conversation:—Defendant—"Is there not a talk of ROGER coming back? ETHERIDGE—"Noo; he'll noo come back again; he was drowned." Defendant—"Well, do you think I am he?" "Noo," says ETHERIDGE, in a good deal broader Hampshire that I can pronounce. (Laughter.) This is what the Defendant has ventured to swear to as a recognition on the part of old ETHERIDGE. It is a deliberate invention on the part of the Defendant, if you believe old ETHERIDGE. Can there be anything stronger against the Defendant than his asking the way to Tichborne? I don't care if ROGER TICHBORNE had been away 184 years—he would never have forgotten the way from Alresford to Tichborne. But though the Defendant could walk about Alresford and pick up all he could, and though he could chat with ROUS, who you remember was HOPKINS'S old clerk, there was one thing he could not do—he could not manage to get into Tichborne House, and thereupon old BOGLE is telegraphed for. Let us take old BOGLE'S account of that visit to Alresford. In itself it seems to me absolutely incredible. He says he was living at Ford's Hotel, with no directions as to what he was to do, no orders given, and no instructions on the morning he found his master gone. He did not know where he had gone, but two or three days afterwards he received an order through a telegram to young BUTTS saying that he was to go to Alresford. He says, "When I went I found nearly 500 people on the platform. Among them was HASTED." I will tell you who also was on the platform—BAIGENT; FRANCIS JOSEPH BAIGENT. Now, FRANCIS JOSEPH—(laughter)—is a gentleman who has had quite enough of the inside of a Court of Justice, and he had had quite enough of the TICHBORNE family. I am indebted to Miss BRAINE—I don't know why I should say indebted, because she would not give me anything if she could help it—but I got it out of her, perhaps filched it from her, that FRANCIS JOSEPH had been a good deal at Tichborne, and had been engaged in preparing an account of the TICHBORNE family. He was an archæologist, and probably knew all about the Dole, and about the Crawls, and about that old pond of which one of the Witnesses spoke. It is significant that BAIGENT came out of the carriage in which he was going on to Winchester to shake hands with old BOGLE. Now, I suggest to you the object of the visit to Alresford was clear. It was to pick up some local information. If this man be ROGER TICHBORNE, why should he in his own village go stealthily about and conceal himself? There was HOPKINS. What harm could it do, if this man was ROGER TICHBORNE, to go and call upon the old family lawyer? Why confine his attentions solely to ROUS and old BOGLE, I want to know? It seems to me that when you look at old BOGLE'S visit the thing is as clear as the sun at noonday. He could not get into the old house without the assistance of old BOGLE, and he got him to go and see the position of the pictures, and with the aid of BOGLE and the catalogue—I have no right to say that BAIGENT helped him, but it was odd that he should be there on that day—he was able to palm off his information upon people. ROUS was a valuable person to make the acquaintance of, because he was in HOPKINS'S service for a considerable time, and could give him a good deal of general information about the locality which would have been useful when it became necessary to see HOPKINS. However, after the return from Alresford, the next thing we find is the Defendant in communication, I think, with Mr. HOLMES. Now the very fact of HOLMES'S engagement seems to me to be open to a great deal of observation. There was no reason why he should not have gone to his own solicitor if he had been ROGER TICHBORNE. Why on earth should he put himself into the hands of a man whose name was never even known to any single member of the family; picked up in a billiard room at London-bridge, and introduced by LEETE? Well, now, gentlemen, that ROUS very speedily was made use of, I take it there can be no doubt. I will read you a little letter to ROUS. You remember when they came back to town how Mr. HOLMES was very speedily occupied in going to Doctor's-commons to get a copy of ROGER TICHBORNE'S will. Having got the pedigree and copies of the family deeds, you have HOLMES very diligent in making inquiries which would give the Defendant information as to ROGER TICHBORNE'S real life. On the 4th of January the Defendant wrote this letter to ROUS:—"If my solicitor, Mr. HOLMES, writes to you, give him any information you can, and depend the same will be in perfect secrecy between us." Why did he want ROUS to be in secret communication with HOLMES? Why should he not send openly to the family attorney, instead of making inquiries of the ex-clerk? Now, there was not only the search for the will, for the deeds, or the preparation of the pedigree, but you will remember that they also made a search at LLOYDS' for the purpose of getting information about the 'Bella,' and the whole of this time there was poor old Lady TICHBORNE in Paris waiting day after day for the arrival of her long-lost son. There was poor Mr. JAMES BOWKER making miserable journeys in the dead of winter to Paris to aid and counsel her, and the Defendant never goes near her till the 10th of January, when he goes with HOLMES and LEETE. Gentlemen, there are those memorable visits to Gravesend by Mr. GOSFORD, Mr. CULLINGTON, and Mr. PLOWDEN. On the 5th of January these three gentlemen went down to Gravesend to get an interview with this man; and I should have thought there was no man whom ROGER desired to see so much as GOSFORD. It is an idle suggestion that he would not see GOSFORD because he had proved his will, because there could be no angry feeling on account of GOSFORD having fulfilled the trust reposed in him. You know very well how these three gentlemen went down, and how the Defendant avoided them. It is clear from his own letter that there was no reason for his avoiding GOSFORD, except that if he saw GOSFORD on the spot GOSFORD would have immediately denounced him. GOSFORD said, "I knew more about the family than anybody, and I thought it was my duty to see the man who claimed to be ROGER TICHBORNE, and having been defeated in my object, I was determined to try again, and on the 8th of January I found the family were preparing to go to town, and HOLMES there. HOLMES procured me an interview with the Defendant." He says "The moment I saw him I found no trace of ROGER TICHBORNE in the person before me. I was scared at his appearance, but I determined not to proclaim my opinion. He spoke first of the SEYMOURS as his 'mamma's' relations. That was very curious, because ROGER TICHBORNE always said 'mother.'" The Defendant said he had been down to Alresford, and had seen HOPKINS and LIPSCOMBE. HOPKINS had recognised him from the window. There is not a particle of foundation for that statement. He also said that the STUBBS'S and ETHERIDGE had recognised him, and that he had told ETHERIDGE all about his cats. GOSFORD then said, "You say you worried the cats with your dogs; what were your dogs' names?" but he could not tell. It is impossible that ROGER TICHBORNE could have forgotten Spring and Piecrust. He is then asked—"Do you remember your horse running away?" and he says "No, I don't." That was a thing which he could not have forgotten. GOSFORD asks him—"Do you remember the island?" and he says, "No, I do not remember much about the island." Gentlemen, forgive me for calling your attention to a letter to GOSFORD in the course of the correspondence, because it is on a matter which must have struck ROGER TICHBORNE. The island was a place where there were a great many rabbits, and it was a thing which had caused a great deal of excitement to him when he wrote this July letter. The letter states that he has been very busy during the last few days pursuing poachers round the little island, who had been shooting the rabbits. He had waded into the water after them up to his waist, but they had got off. However, he went in his wet clothes into the town, but could not find them anywhere. He made his report to the Chief Justice—(laughter)—that is, the Chief Justice of Poole—(renewed laughter) who said he would take care of them if he found them. He also wrote to Lady DOUGHTY saying that pursuing the poachers was not without its interest, and he expected soon to receive a special commission for the purpose of destroying poachers. (Laughter.) Now, when GOSFORD puts this question, the Defendant answers, "No, I do not remember much about the island." GOSFORD then asks him, "Who made your will?" "HOPKINS, of course." Of course it was just what HOPKINS did not do. It was what SLAUGHTER did. (Laughter.) "Do you remember CULLINGTON?" "Oh, yes." It was SLAUGHTER he ought to have remembered. "Do you remember anything happening to SLAUGHTER in a dog-cart?" SLAUGHTER had gone down to pay ROGER TICHBORNE a visit, and ROGER TICHBORNE had upset him in a dog-cart. ROGER used often to refer to this with great amusement, but the Defendant said, "No, I don't recollect anything about it." "Do you recollect the horse you left with me?" "No." Then Mr. GOSFORD says, "Do you recollect MOORE?" "Oh, yes," says he, "I left MOORE at Monte Video." We know very well he left MOORE at Santiago. He is asked, "How did you get to Monte Video?" and he says, "By ship." We know very well that ROGER TICHBORNE went over the Cordilleras. You will remember that GOSFORD deposed that there was not one single syllable said about that ride over the Cordilleras and the Pampas, which he could not have forgotten, because, says GOSFORD, "he sent me the very boots in which he rode, and asked me to preserve them." Well, as regards the 'Bella' he suggested first of all that his luggage was not put on board the 'Bella,' and then he said, "How do they know that I was ever on board the 'Bella?'" Here I pause for a moment to remind you of the gentleman who was called from LLOYDS', who said that when they were searching they had great difficulty in making the dates fit, adding—"I do not think it would have been very difficult to persuade him that it was not the 'Bella' he sailed in." They then adjourned to the railway station and had a carriage to themselves. They began to talk again, and the Defendant asked after Sir (then Mr.) PERCIVAL RADCLIFFE, saying "How is PERCIVAL?" That is a name Mr. RADCLIFFE was never known at all by. As to Ireland, GOSFORD asked him, "Where were you quartered in Ireland?" and he said, "Oh, at Dublin, and at the Curragh, at Kildare." Now, this was just one of those things he had not been able to get any information about from BOGLE. There was then no means of knowing where ROGER TICHBORNE had been. It was just like

that ride across the Cordilleras. BOGLE could not give him any information, and that may possibly account for his ignorance at that time. He is asked if he could remember anything about his charger running away, and he could not. Then he asks a question himself: "Do you remember my going over to Tichborne to take leave of my uncle and aunt?" That was a thing that never happened. He concluded by asking GOSFORD if he remembered going to Southampton with him when he left England. But GOSFORD says that he only went to Winchester, and left him to complete the journey alone. All this took place in the presence of HOLMES, and I say this because a violent attack was made on GOSFORD, which I shall have to deal with by-and-bye. You are asked to disbelieve GOSFORD. Gentlemen, I ask you if what he said was not true why could not HOLMES be called to disprove it? GOSFORD says that throughout the conversation he put at least a dozen questions which the Defendant could not answer. If it is not true, why is not Mr. HOLMES called to contradict Mr. GOSFORD? In the absence of Mr. HOLMES I have a right to say that Mr. GOSFORD'S evidence is true, and that on the 8th of January the Defendant was in a state of the grossest ignorance of things that ROGER TICHBORNE must have known, and there is nothing more important than the will which SLAUGHTER made. Now, just let us see what the Defendant said about it. In one affidavit he writes this:—"Immediately upon my presenting myself to my mother, the Dowager Lady JAMES TICHBORNE, she identified me, and I have been identified by Mr. HOPKINS, my father's late solicitor, who was also acting as my solicitor before I left England; also by my cousin CATHERINE DOUGHTY RADCLIFFE, and also by my cousin ANTHONY JOHN BIDDULPH, and also by Mr. GOSFORD." That is what he swore in his affidavit. You know now how absolutely untrue it is; and this is an affidavit which was afterwards circulated for the purpose of imposing upon the persons to whom it was sent. This was prepared by HOLMES, who is not here to defend himself, but I cannot help that. He was in the carriage with the Defendant and GOSFORD, and he knew the gross ignorance the Defendant displayed, and yet here is this affidavit; and, indeed, if you come to look at his own affidavit, written on the following day, you cannot come to any other conclusion but that he did it without a shadow of justice for making the statement. On the 9th of January the Defendant wrote to Lady TICHBORNE, "I have seen GOSFORD. He seems very much changed to what he was. He seems to deny everything I say." The opinion GOSFORD formed on that occasion he has never found reason to alter, yet you will find that the Defendant wrote to Lady TICHBORNE that GOSFORD was disposed to change his opinion, and be of service to him. Now, gentlemen, on the 10th of January the party went to Paris for the purpose of the Defendant being recognised by Lady TICHBORNE. It consisted of HOLMES and LEETE, a strange attorney, a strange friend, and the Defendant. Well, now, in what frame of mind she was, and how obstinately determined she was to recognise the Defendant, you will find when you come to deal with the condition in which she was. This interview was an extremely ludicrous one, and at the same time an extremely painful one. We must take the account of it from the only Witness who could be called to describe it—JOHN COYNE. If this story told by JOHN COYNE be not true, there are two persons who could be called to contradict it; LEETE and JOHN HOLMES. JOHN COYNE describes the visit thus. The party had arrived on the previous night, and COYNE says he was sent the following morning by Lady TICHBORNE for the purpose of seeing and bringing the Defendant to her hotel in the Place de la Madeleine. He found that HOLMES had not got out of bed, and the Defendant a great deal too unwell from sea-sickness to see Lady TICHBORNE. He delivered his message to Lady TICHBORNE, and was sent back again with another. Three or four times did JOHN COYNE go from Lady TICHBORNE, at the Place de la Madeleine, to the Hotel de Lille et d'Albion. Three times he tried to bring the Defendant away, and at last HOLMES and LEETE determined to go alone and see Lady TICHBORNE. They went, and, says JOHN COYNE, "I heard this conversation while I was cleaning the forks in the ante-room. I heard Lady TICHBORNE ask HOLMES whether he was sure the Defendant would get the property, and HOLMES said he would get the property as sure as she sat there;" and after that Lady TICHBORNE accompanied them to the hotel, and in the course of the interview, JOHN COYNE describes this scene. He says that he and she went together into the bedroom. They found the Defendant lying in bed with his face to the wall, and Lady TICHBORNE leant over and kissed him. She said he looked like his father, but his ears were like his uncle's. (Laughter.) HOLMES said to COYNE, "There you see how Lady TICHBORNE recognises her son;" and COYNE said, "Yes." And then he says that Lady TICHBORNE called to him to take off his coat and waistcoat and undo his braces, or else he would be stifled. (Laughter.) And that was all that passed. Now, I don't know what there is against JOHN COYNE. He had a strong Irish accent, but beyond that there was literally nothing against him.

Mr. TAYLOR (Juror): He was not cross-examined.

Mr. HAWKINS: No. We can understand why a Counsel would not cross-examine such a Witness as WAKELING, whose whole conduct showed that he was unworthy of credit; but there was nothing against COYNE, although the Counsel for the Defendant said that it would be waste of time to cross-examine him. Well, if you don't want to cross-examine him, don't. (Laughter.) Nobody wishes you to cross-examine him. As I have said, this is a free country, and you can leave him alone if you like. (Laughter.) COYNE did not want to be cross-examined, but JOHN is conscious that he spoke the truth. In one of his visits to the hotel he saw the Defendant at breakfast, and he said in his brogue that he began "tearing" away at him, upon which JOHN said, "It is a very happy thing that you have got your mother to recognise you." "Thank ye," says the Defendant. (Laughter.) At that time he had not seen "mamma." (Laughter.) He would not see "mamma." (Renewed laughter.) That was before she had kissed him on the ears, and told JOHN to turn him over, so that he might not be stifled. (Laughter.) As far as I can see COYNE is a respectable man, and worthy of credit.

A JUROR: He wanted to address the Jury.

Mr. HAWKINS: Yes, I wish he had. Probably if he had been allowed to go on he would not have finished yet. JOHN COYNE could have been contradicted as LEETE and HOLMES were there. If he was not contradicted, why was he not, and what becomes of all the maudlin sentiment about the maternal instinct? You must look to the circumstances. If JOHN COYNE speaks the truth it seems absurd to dwell upon the recognition of Lady TICHBORNE and the circumstances attending it, but I may say something about that hereafter. Lady TICHBORNE you remember, ordered herself to be refused to almost all her friends and she would not see Mr. BOWKER. It is true she brought CHATILLON once into his presence: but it is evident that she designed that the Defendant should be informed who he was. CHATILLON agreed to see the Defendant on condition that his name was not announced, but she mentioned his name in greeting him. Of course then the Defendant knew who it was. CHATILLON said, "My lady, this is not your son." There is somewhere in the handwriting of Lady TICHBORNE a letter saying that CHATILLON would be able to recognise him. The Defendant was tested, but there was not a single thing that he could recollect, and from that time till he saw him in Court, CHATILLON had no communication with the Defendant. Now in the course of ten days they returned from Paris, and upon their return the next thing that was done was the visit to Mr. HOLMES in the month of January.

[It being now within a few minutes of 4 o'clock the Court adjourned.]

LETTER FROM SIR ROGER TICHBORNE.

34, Bessborough-street, Jan. 20th, 1874.

DEAR SIR,—I have to acknowledge the receipt of your letter, with a Post-office Order enclosed for 10s. towards my Defence, for which please accept my sincere thanks. You say you did not receive an answer to your last letter—as a rule I always answer every letter I receive, and cannot understand not having done so to yours. I think there must have been some mistake, either I did not get your letter or I answered it. I remember receiving an envelope with some of those slips signed Truth and Justice, about a month ago, but no other enclosure, so of course I did not nor do I now know from whom they came. I am much obliged to you for what you sent. That LUIE'S affair completely stopped all subscriptions. The public were under the impression that I had been in constant communication with him, and that I had as he, the scoundrel, states, recognized him, whereas I had but one conversation with him, and what he mistook for recognition was my saying, "Well, LUIE, Como Esta." It is perfectly true that I said so, but not as a recognition. LUIE was outside in a cab; WHALLEY said, after reading his statement to me, "Shall I bring him in?" I said, "Oh, yes," and while he was gone out to bring him in, it occurred to me that the steward of the 'Osprey' spoke Spanish, so to test him I said when he came in, "Well, LUIE, Como Esta," and he answered me in Spanish immediately. The only conversation I had with the scoundrel was in the presence of Mr. WHALLEY and Mr. O'BRIEN, a pupil of Mr. MACMAHON. Of course the public are under the impression that I had made a regular associate of him. In an article in the 'Graphic' of last week, there is stated that Inspector CLARKE had said that LUIE had stated *I* coached him with others, whereas no one word was said about me in the matter of coaching. I have written to them to deny it, but cannot say whether they will or not.—Yours truly,

Mr. HOGG. R. C. D. TICHBORNE.

ONE HUNDRED AND SIXTY-THIRD DAY.—WEDNESDAY, JANUARY 21ST, 1874.

The Trial at Bar of the Claimant for perjury was resumed before Lord Chief Justice COCKBURN, Mr. Justice MELLOR, and Mr. Justice LUSH.

The LORD CHIEF JUSTICE said: Before you begin, Mr. HAWKINS, I wish, on behalf of my learned brothers and myself, to state that we have been very much distressed at finding in a daily paper of the highest and most respectable character a letter inserted which certainly amounts to a Contempt of this Court. It is a letter from Mr. WHALLEY, in which, after making other statements which I do not quarrel with, he adds this passage:—"As the statements of Detective CLARKE of what JEAN LUIE has told him—though denied, as it seems, by LUIE himself—may materially prejudice the Trial, I consider that I am called upon to state that nothing that has occurred in relation to this man affects my belief that his evidence as to the 'Osprey' is substantially true." Now, that is a comment upon the evidence of a Witness who has been called and examined in this Trial, and we have again and again said that any comment upon the evidence of a Witness while the Trial is pending is a Contempt of Court; and therefore this is a Contempt of Court. I can quite understand that the object of the writer is not so much to affect the Trial as possibly to affect the Trial of LUIE.

Mr. Justice LUSH: Both.

The LORD CHIEF JUSTICE: I say not so much this Trial, but it may have been intended to affect both; and it certainly comes within the rule we have laid down as being a comment made publicly upon the evidence of a Witness who has been examined. Therefore it is amenable to the punishment of this Court, and if it were not too contemptible to be so treated, we certainly should visit it in that way. And as it is the more offensive and the more unwarrantable, because it expresses the confidence and the belief of the writer in the testimony of a witness who has been openly given up by the Counsel for the Defendant in this cause, who declared emphatically that if he could bring himself to believe that his client had anything to do with the bringing forward of LUIE he would abandon his cause, quit the Court, and have no more to do with the case. That, after such a declaration a gentleman should openly and publicly state—and so highly respectable a newspaper should open its columns to such a communication—that his belief is unshaken in the testimony of that Witness, is, I think, liable to give very great scandal. As I said before, it is too contemptible for notice in any other way than to warn the paper not to lend its aid to the publication of similar matter again; and, but for that purpose, I might not have referred to the subject. It is, however, a Contempt of Court, and I hope it will not be repeated.

Mr. HAWKINS then resumed his address to the Jury. He said:—Gentlemen, I concluded yesterday with the history of the supposed recognition of the Defendant in Paris, but I think I can hardly make that part of the story perfectly intelligible without I call your attention to the account which the Defendant himself gave of that alleged recognition—a very curious one, indeed, and one very well worthy of your attention. The Defendant is asked this question, "Did you see your mother the same night you arrived or not?—Not the same night. When did you see her?—It was late. I saw her the next morning." Now, one would suppose that there would have been no great difficulty in a son describing the scene which took place when his mother had recognised him after an absence of twelve years; but when he is asked to describe the scene, he says, "I don't know that I am able to do that." He is then asked to give the best account he can, and to tell in his own way what occurred. He says:

"My mother was standing alongside the bed when I was lying on it.

"Well, did you speak to her, or she to you?—I could not say which spoke first, but we conversed for a long while.

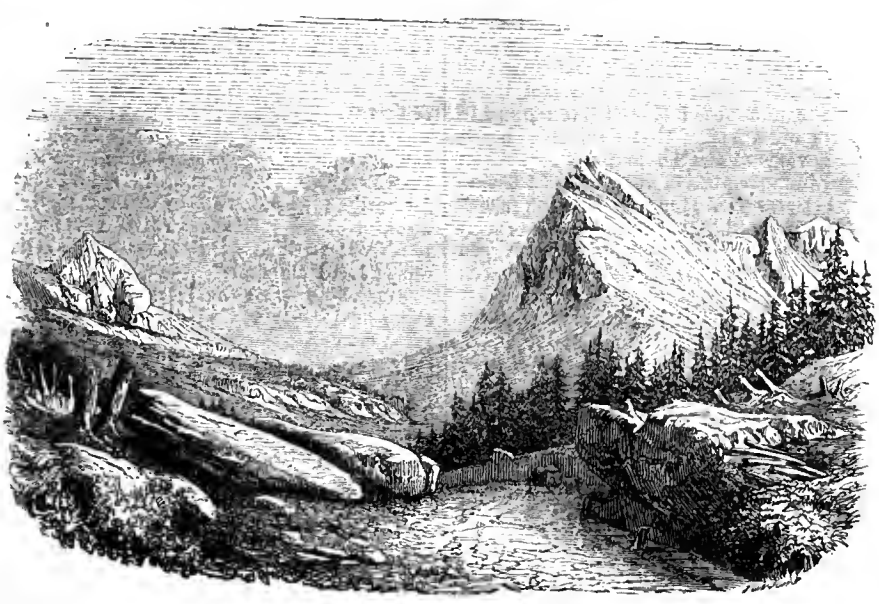
"Can you tell me whether she recognised you at once, or after a time, or what?—I cannot say.

"Is that the answer you give?—There were others in the room who will be able to give a better account than me.

"Who was in the room?—Mr. HOLMES and Mr. LEETE.

"Any one else?—I am not sure if Dr. SHRIMPTON was there or not.

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 61.—PICO DE SAN TOMAS, SOUTH AMERICA.

"Were either you or your mother affected at the interview?—Yes, I believe we were both.

"Did she in words express any doubt about your being her son?—Oh no, not the slightest."

That is a curious description to give of a recognition between mother and son after a long lapse of time. He does not recollect whether his mother was affected, and he cannot say what took place. Well, gentlemen, upon the return of these parties from Paris I told you there were preparations about to be made for the purpose of seeing Mr. HOPKINS, who was living at Alresford. Of course the visit to Lady TICHBORNE in Paris, prolonged as it was for ten days, was likely to be productive of some addition to the store of knowledge of the Defendant. I think it was almost immediately after that there was an interview with Mr. BURDON; and I mention it because it shows the very great zeal which Mr. HOLMES was exhibiting early in January, 1867, for the purpose of getting such information as he could about ROGER CHARLES TICHBORNE. BURDON, you know, had been in the service of the family, and at the time I am now speaking of he was a Custom-house officer. He says that in consequence of a paragraph which appeared in the papers, announcing that the Claimant to the TICHBORNE baronetcy had arrived in this country, he went to Mr. HOLMES'S office, and was afterwards invited by him to come to the City Club House, in George-yard, London. He went, and was in the smoking-room taking a glass of wine and enjoying a cigar when the Defendant walked into the room; but he was not introduced to him. A short interval elapsed, and then Mr. HOLMES told BURDON to look round the room and see if he could recognise anybody, but he replied

that he could not. "Then Mr. HOLMES," says BURDON, "asked me how So-and-so signed his name, and wanted me to enter into family matters, and I said, 'I tell you what it is, Mr. HOLMES, I prefer speaking in private, if you have anything to say.'" Accordingly they went downstairs, and there BURDON took a pencil and showed Mr. HOLMES the way ROGER TICHBORNE used to sign his name. Then Mr. HOLMES asked him about Mr. ROBERT TICHBORNE, of Bath, and BURDON told him that he was a very tall gentleman; and he said that Mr. HOLMES asked him so many questions about the family in general that his suspicions were aroused. Now there can be no question that BURDON knew the family, and that he was in a position to give to HOLMES some information which would be very valuable to his client. Is that true which BURDON has sworn to? If not, Mr. HOLMES, I should have thought, would have been very anxious indeed to have contradicted it. Certainly it would have been in the interest of the Defendant to have contradicted that statement if not true. You have no contradiction to it, and, in the absence of anything to affect the character and credit of Mr. BURDON, I have a right to take that statement as true, and, if so, it throws some light upon the way information was gained in reference to the history and life of ROGER TICHBORNE. It became at length necessary to see HOPKINS, and the Defendant went down to Alresford for that purpose on the 31st of January; but, on the 26th, a letter was sent by HOLMES to ROUS wherein he states: "Sir ROGER TICHBORNE and myself will be much obliged if you will come here on Tuesday next. You will not be detained more than a day." What on earth, except for the purpose of getting information from ROUS to play off on Mr. HOPKINS, is he sent for from Alresford up to Mr. HOLMES's office in the Poultry? ROUS went, and the information having been got from him, there was immediately afterwards sent down to Mr. HOPKINS that very extraordinary letter in which Miss BELLEW'S name is mentioned. I shall have a word or two to say about that; but perhaps I had better, first of all, read you the letter itself, which was called in the course of these proceedings a sort of test letter. The post mark is the 1st February, 1867, and it is from the Defendant to Mr. HOPKINS. I shall afterwards submit to you the last letter written to Mr. HOPKINS by the undoubted ROGER TICHBORNE in 1852; and I can but express my surprise that anyone who saw the two letters could be deceived, unless he had been operated upon by some extraordinary influence which at present I have no means of proving to you, because Mr. HOPKINS was never examined in open court at all. He died before any of the revelations, of which we now know, were made, and the only person who can give information on the subject is Mr. FRANCIS JOSEPH BAIGENT, whom they would not call.

The LORD CHIEF JUSTICE: I beg pardon, Mr. HAWKINS, for interrupting you for a moment. I adverted to a letter which appeared in the 'Daily News' to which my attention was only called in coming down to Westminster, and I only saw one part of that which is published in the 'Daily News'' columns. Since then my brother LUSH has called my attention to the remaining part of the publication, which consists in the publication of a letter to Mr. HENDRICKS, the former solicitor of the Defendant, and that letter contains a comment upon the evidence of LUIE, having reference to this Trial, which is a gross Contempt of Court—so gross that we cannot possibly pass over it. Therefore we must call upon the publisher of the 'Daily News' to answer for it. At the same time, if he tells us it is not the production —as I do not suppose it is—of the publisher of the newspaper, but of Mr. WHALLEY, we shall call upon Mr. WHALLEY to answer for what we are all perfectly satisfied amounts to a gross Contempt of Court.

The Foreman of the JURY: It has been published in other papers—the 'Standard' and 'Morning Advertiser.'

The LORD CHIEF JUSTICE: We have no desire to visit the press with any consequences of an indiscreet and hasty publication of what, upon more mature reflection, they probably would not have opened their columns to; and if we can be satisfied by affidavit that this publication has taken place at the instigation of Mr. WHALLEY, we do not wish to go through the form of calling up the proprietors or publisher of the newspaper. But we must have that, or we must hold them responsible. We will put a stop to this scandalous abuse of the public press in the shape of letter-writing and speeches upon subjects affecting this Trial.

Mr. Justice MELLOR: I did not read any portion of this until I came down here, and when the Lord Chief Justice said what he did just now I was certainly unaware of what followed. It is the publication of that which appears to me to be intended materially to influence the proceedings in this Trial, and I do not think we are at liberty to pass that over. I should have been quite content with what has been said as to the former letter, but as to that enclosure I think it is as gross a Contempt of Court as we have had during the progress of this Trial.

The LORD CHIEF JUSTICE: Therefore we must call upon the publisher of the 'Daily News.' The Foreman of the Jury says it has been published in other papers. We have only seen it in that I have mentioned, and one paper will answer the purpose. We must call upon the publisher to answer for contempt, or afford us sufficient information by which we can judicially get at the author of the letter.

Mr. HAWKINS: Will your lordship forgive me one moment while I instruct Mr. POLLARD? (After consulting with that gentleman, the learned Counsel said:) I am sure the gentlemen connected with the 'Daily News' will give me all the information in their power, and probably it would be satisfactory to your lordships, and sufficient, if they furnish me with the information as to the source whence they received the letter.

The LORD CHIEF JUSTICE: That ought to be upon affidavit.

Mr. HAWKINS: I mean upon affidavit when I mention the matter with regard to Mr. WHALLEY, without calling on them formally.

The LORD CHIEF JUSTICE: Quite so. Then you had better bring the matter before us to-morrow morning. It is a matter that does not brook delay. If there is any repetition of it, we cannot hold the publishers of the newspapers harmless.

Mr. HAWKINS: I will endeavour, my lord, to bring the matter before you this afternoon.*

Resuming his address to the Jury, the learned Counsel said—Gentlemen I was saying I would read to you the last letter which ROGER TICHBORNE, so far as I know, wrote to Mr. HOPKINS, and the first which the Defendant wrote to him. [The original letters dated respectively the 27th October, 1852, and February, 1867, were handed to the Jury.] You will see that ROGER TICHBORNE addressed Mr. HOPKINS as "My dear Sir," and signed himself, "Yours truly." The Defendant addressed Mr. HOPKINS, "My dear friend." This is a way in which ROGER TICHBORNE never addressed Mr. HOPKINS at all. He had never been so familiar. As to the difference of style between the two letters you will form your own judgment. I do ask you to bear in mind what the Defendant said about Mr. HOPKINS. I do not wish to say anything derogatory to Mr. HOPKINS'S character; but I cannot quite allow him to be described in the way he has been described by the Defendant's counsel. He says that Mr. HOPKINS'S recognition was a great thing for him, and that he was a very shrewd, clear-headed man. Now how on earth could Mr. HOPKINS be deceived by such a letter as that I last read to you? In it there is the passage, "I suppose you remember having heard of Miss BELLEW in Ireland—rumour only." At present we have not the slightest information before us as to what that "rumour only" meant. When Lord BELLEW was in court the Defendant's counsel cross-examined him very considerably; but there was not a particle of explanation given of this "rumour only," nor was it said at all what was meant. I was therefore amused when the Defendant's counsel, in grave tones which could not have been serious, and which must have been assumed, said to you, "Lord BELLEW will give you no information; why don't they call somebody to tell you what is the meaning of this reference to Miss BELLEW in this letter? GOSFORD won't tell you; Lord BELLEW won't tell you; I tried to get it out of Lord BELLEW." It never occurred to him that there sat the man who wrote the letter—(a laugh)—and that he had nothing to do but tap him on the shoulder and say, "What on earth do you mean by that letter?" If the Defendant would only speak the truth, he might have got a very satisfactory explanation, but at all events he could have got some, and have given you what he could. But what an absurdity it is to ask you, who are gentlemen of common sense, and who have got your wits about you, to find fault with the prosecution for not explaining a passage in his own client's letter, when there was the man sitting before him who could have furnished the explanation. It is very much like one or two other things which have occurred in the course of this cause, which I shall have occasion to refer to. There is no explanation given, and I am called upon to explain what the Defendant meant. That is cool. (Laughter.) But we have seen a good deal of what is cool in the course of this enquiry. What the character of Mr. HOPKINS' recognition is one really does not know. There is not a particle of evidence before you that he ever recognised the person of the Defendant or his features. Indeed I am not aware that there is any evidence that he recognised him at all, with the exception of the statement made by the Defendant's Counsel, and the fact that Mr. HOPKINS unquestionably was seen walking with him at Alresford.†

Mr. Justice LUSH: I am under the impression that there is evidence that Mr. HOPKINS did not recognise his features.

The LORD CHIEF JUSTICE: I do not think so.

Mr. Justice LUSH: Perhaps I am wrong.

Mr. HAWKINS: I know what your lordship is alluding to, but I do not like to mention it unless it had been actually in evidence.

The LORD CHIEF JUSTICE: It has not appeared in the course of this Trial.

Mr. Justice LUSH: I certainly did not get it from that source.

A JUROR: Is there not something touching it in Mr. HENRY SEYMOUR'S evidence? They met at HOPKINS'S house.

The LORD CHIEF JUSTICE: I will refer to that evidence.

Mr. HAWKINS: At all events, gentlemen, we have in one way a statement of the Defendant that he was recognised from the window by HOPKINS; but it is only the Defendant's own state-

* Full copies of Mr. WHALLEY'S letters to the Editor of the 'Daily News,' and to Mr. ALFRED HENDRICKS will be found printed in the INTRODUCTION, pages 262 and 263.

† See Trial, Vol. III, page 149, where HOPKINS says: "*Why that is your father's handwriting, Sir Roger.*" And page 155, HOPKINS says: *I swear, Mr. Seymour, by God, I believe this man to be Roger Tichborne.*" See his affidavit, INTRODUCTION, page 32; his letter to Captain HARRIS, page 34; also to Lord ARUNDEL of Wardour, and to Mr. HENRY D. SEYMOUR, which appears in Vol. III., page 188.

ment, and there is not a particle of evidence of that; and, indeed, as far as one sees, he really did not recognise him. It is quite impossible it could have been so, for having had a great deal of stress laid upon this recognition of Mr. HOPKINS, if it were the fact that he had recognised him, you may depend upon it you would have had that pressed upon you much more than once. There is another observation I must make respecting Mr. HOPKINS. We have not Mr. BAIGENT'S evidence, and we cannot, therefore, get anything out of him. However, you must ask yourselves whether it is possible for Mr. HOPKINS, at all events, to have identified him from a comparison of the two letters which are before you. If really Mr. HOPKINS did recognize him from these letters at all, I don't think you will give him credit for being so shrewd and intelligent a person as he was represented to be by the Defendant's Counsel. It is for you, in dealing with Mr. HOPKINS, to say he must have been deceived by an apparent recollection of things which, after all, was merely acquired knowledge. Mr. HOPKINS was never made aware of the fact that the Defendant in Australia had been in entire and dire ignorance of all matters connected with the family. He was never told that Mr. HOLMES had been searching away at LLOYD'S and Doctor's-commons for news of the 'Bella' and the will. If he had been told that, I wonder what he would have said! Gentlemen, I think Mr. HOPKINS'S recognition has been disposed of by the observations which I have already addressed to you. Now, after Mr. HOPKINS had been seen, Mrs. GREENWOOD, who was living at Brookwood, and who had previously sent him a verbal invitation by BAIGENT, which had been declined, sent him another. This was at the time that the Defendant came down at the end of January. Then came that "Cousing Kate" letter, which I call your attention to in order that you may see one in contrast to it, because I think that it is as well that you should see as many of these contrasts as possible. Now is there a reason of any sort or kind why he should not go and see Mrs. GREENWOOD? They had had no quarrel. On the contrary, they were on the most affectionate terms. Brookwood, as Mrs. GREENWOOD said, was always at his service—he came and went whenever he liked. Now let us see the difference in style of these two letters.* I will first read the last letter written by ROGER TICHBORNE: [Mr. HAWKINS read the letter, dated December 6th, 1852, which appears in Vol. II. page 184.] This is the first letter the Defendant wrote to Mrs. GREENWOOD:

"Swan Hotel, Alresford, February 3rd, 1867.

"MY DEAR COUSING KATE,—I am very sorry i am not able to come and see you before I go; my head is so bad that i am not fit to come. Mr. BAIGENT is very much annoyed about it, but I am coming here to spend a few days at the end of the week, and i shall then have the pleasure of meeting you again. You will excuse me for not coming has it will only be a few days before I am with you. I have an invitation from HOPKINS to spend a few day with him, so I shall be down about Thursday; give my regard to Cousing WILLIAM, and I shall soon be down again and have the pleasure of a hunt with my old friend GEORGE. With my best regards, my dear Cousin, to you and your family, I remain your affectionate cousin,

"R. C. TICHBORNE.

"I have to meet mama to-morrow at Dover, and our address will be Essex lodge, thornton heath, Croydon."

That letter speaks for itself, and it is not only useful for the purpose for which I have quoted it, but it establishes the fact beyond all question that on the 3rd of February, 1867, FRANCIS JOSEPH BAIGENT was in the company of the Defendant, and taking an active interest in him, for FRANCIS JOSEPH was "very much annoyed" about his not going to see Mrs. GREENWOOD. Although he had a "bad headache" he was enjoying the society of Mr. HOPKINS and FRANCIS JOSEPH, and as Brookwood was only six miles off, I should have thought a little drive would have done him good. (A laugh.) That visit over, he went away, but he was there again in the following week. He had promised to go to Brookwood when he next came down, but he never went near the place. Having however got the countenance of Mr. HOPKINS, he thought he might venture on an interview with Mr. HENRY DANBY SEYMOUR, and accordingly wrote to him an invitation to come down to Alresford. It may be useful to contrast the letter with the last written by the real ROGER to Mr. DANBY SEYMOUR, dated the 19th July, 1852. In that letter, which is before you, the real ROGER begins:

"My dear HENRY,—I was happy to learn by the note you were kind enough to send me that you are at last elected for Poole."

The Defendant's letter, which is dated the 10th February, 1867, begins, "My dear uncle," a phrase never used by ROGER TICHBORNE. There is not in the whole correspondence or in all the evidence a word to indicate that ROGER ever called these gentlemen anything but "HENRY" and "ALFRED." The learned Counsel read the letter. Accepting the invitation conveyed in that letter, Mr. HENRY SEYMOUR went to Alresford in company with BURDON. The Defendant was asked if he knew who BURDON was, and replied, "My uncle NANGLE." He was no more like Mr. NANGLE than I am; that gentleman was twice the age of BURDON, and they did not resemble each other in the least. After a little further conversation he was asked if he knew who General MANDREVILLE was, a gentleman who was an intimate friend of Sir JAMES in Paris, and who took a great interest in ROGER, and made him many presents. But the Defendant did not remember him, and had not the least idea who he was. BURDON happened to have a letter from Sir JAMES TICHBORNE, but he could not recognise the handwriting till Mr. HOPKINS said, "Why that is your father's writing!" I may mention in passing that in the Court of Common Pleas the Attorney-General put into his hand a letter written by old Mr. SEYMOUR. He saw "H. SEYMOUR" was the signature, and he said, "Oh, that is DANBY SEYMOUR'S writing." A great mistake, for there were not two handwritings more unlike. An appointment was made for a meeting with the SEYMOURS, which never took place. Lady TICHBORNE was often deceived by the account of interviews given to her by the Defendant, or those about him, with the view of creating feeling in his favour. We know about the ringing of the bells, and about a gathering of the country people; and I don't wonder that a great many of them, particularly the uneducated, should have been captivated by circumstances of this kind. I now come to the first interview at Croydon, March 8, 1867. There were present Mrs. TOWNLEY and Lady RADCLIFFE, accompanied by Sir JOSEPH RADCLIFFE. It was a matter of utter impossibility that ROGER TICHBORNE should make a mistake about Miss DOUGHTY. But we find that the Defendant identified Mrs. TOWNLEY as Miss DOUGHTY. As there were only two ladies present, it was not difficult to correct the mistake.

The LORD CHIEF JUSTICE—That all turns upon the opportunity the Defendant had of really seeing the ladies' faces before he expressed any view on the subject—whether their veils were up or down, and if down, whether they were sufficiently transparent to allow the features to be seen.

Mr. HAWKINS—There is no doubt it is open to that remark, but, gentlemen, I pray in aid this. It is not merely the want of recollection of the features of the lady. We know that the last interview between ROGER TICHBORNE and Miss DOUGHTY was on June 22, 1852. There is not a particle of evidence to show that they ever met after that day. The Defendant says they met at Tichborne just before he went abroad. We know that for seven months before he went away ROGER never went near Tichborne at all. If the Defendant had had any personal acquaintance with Miss DOUGHTY, he would have been able to recall some little incident that occurred that in one minute would have reminded her that the man standing there was the man she had seen, though she could not recognise his person. It is not unworthy of remark that we have in the "Curragh of Kildare" a piece of the grossest ignorance, and I will tell you why he did not correct it before March. Old BOGLE knew nothing of the movements of the regiment; Mr. HOLMES never got the movements of the regiment until the end of March; and CARTER, who was the first person acquainted with ROGER'S military history, never came to the surface until late in the month of March, and this conversation occurred early in that month. But we never find him making the same mistake after CARTER came. He was invited to speak about his South American travels. Now, there is a subject on which they had got a host of letters from ROGER TICHBORNE from South America, but the Defendant said, "My lawyers have told me I must not talk about South America," as if there was something dangerous about it. I am not surprised that not only the ladies, but Sir JOSEPH RADCLIFFE came to the conclusion that he was not the man. But this shows the fairness of the family. They said they would give him an opportunity of persuading them. There was no object in keeping ROGER out of his property. They had never had an angry word with him, and if he had come back they would have rejoiced to see him. The second meeting was held on the 12th of March, and there were present Mr. RADCLIFFE, Mrs. TOWNLEY, and Mrs. and Miss NANGLE. Mrs. RADCLIFFE missed the train. It is too bad to make all sorts of suggestions that her statement on the point was not true; but there is no ground for them. In the course of the conversation something occurred which is very important as showing not only that the Defendant was ignorant of what ROGER TICHBORNE did, but that he had been learning something about ROGER TICHBORNE, and that he had not got his story correctly. Sir JOSEPH RADCLIFFE says—"He spoke of having given TALBOT CONSTABLE a black horse, which he had bought of LAMBERT." "Now," said Sir JOSEPH, "that is not correct. It is quite true TALBOT CONSTABLE had a present of a black horse, but it was I who gave him it, and I did not give him the horse ROGER bought of LAMBERT." He was mixing two stories together. Sir JOSEPH RADCLIFFE gave TALBOT CONSTABLE a horse, but he did not buy it of LAMBERT; ROGER TICHBORNE bought a horse of LAMBERT, but he did not give it to TALBOT CONSTABLE. (Laughter.) It is just the same mistake as he made about Captain FRASER'S snuff-box. The Defendant's Counsel

* ROGER TICHBORNE wrote a letter to his cousin, Mrs. GREENWOOD—the last he wrote before he left England, on 6th December, 1852. It ended thus:

"Believe me, *my dear Cousin*, your affectionate Cousin,

"R. C. TICHBORNE."

The first letter the Claimant wrote, on his return to England, was to this same cousin, Mrs. GREENWOOD, 3rd February, 1867, and which ended thus:—

"With my best regards, *my dear Cousin*, I remain your affectionate Cousin,

"R. C. D. TICHBORNE."

says that is the strongest point of his case; but I shall show you that it goes for nothing, or rather is in favour of my case. Well, I have heard no explanation about that black horse at present. It is too late now to offer it. The Defendant failed to recognize Mrs. NANGLE and Miss NANGLE. You know she thought she would try her hand at a little bit of cross-examination in French;* but no, no. No French, that is not in the contract—(laughter)—keep strictly to the bargain; there is no French talked at this establishment. Well, now, having learned what occurred with HENRY DANBY SEYMOUR, with Mrs. NANGLE, and Mrs. TOWNLEY, one feels a little surprised at the unblushing audacity of any one venturing to swear to the affidavit I am going to read to you:—"Immediately upon my presenting myself to my mother, the Dowager Lady TICHBORNE, she recognised me. I was identified by Mr. HOPKINS, my father's late solicitor, who was also acting as my solicitor before I left England; also by my cousin CATHERINE MARY ELIZABETH RADCLIFFE, and also by my cousin ANTHONY JOHN BIDDULPH, and also by Mr. GOSFORD." I shall have a word or two to say about Mr. BIDDULPH, by-and-by. He adds, "and a great number of others who knew me well." Now, I hope the Defendant did not tell HOPKINS what were the results of the interview with GOSFORD, Mr. SEYMOUR, and Mrs. RADCLIFFE and Mrs. NANGLE at Croydon. It is all grossly untrue, except so far as BIDDULPH is concerned, and I think I shall satisfy you that BIDDULPH's recognition is absolutely worthless. It is perfectly true the Defendant managed to secure the countenance of Colonel LUSHINGTON, who was occupying Tichborne House, but that comes to nothing, for the reason that Colonel LUSHINGTON never knew ROGER TICHBORNE. He was no doubt influenced by the very plausible manner of the Defendant, and by the cunning agency of people living in the neighbourhood. BAIGENT lived there, and so did Mr. GUILDFORD ONSLOW. Then there was Mr. SCOTT, who was cajoled at that meeting into believing that STEVENS's letters were forgeries, after it was discovered that they were not forgeries, and who was disgracefully allowed to remain in ignorance about them until he gave his evidence. I may make, with regard to this gentleman, the same observations I made with reference to Mr. HOPKINS, that all they did they did in ignorance of what had taken place; for not one of them was informed of the ignorance of the Defendant, or of the details of the interview at Paris. They went boldly down to Alresford, and told Colonel LUSHINGTON and Mr. SCOTT, and published it in the newspapers, that Lady TICHBORNE had recognised him. There are identifications and identifications. If they had gone down to Alresford and had said that he would not go near his mother on the night of his arrival in Paris, that she sent messengers three times before she could get him to see her—if they had told them all this, what do you think they would have said? If they had told them the circumstances of what was called the recognition and identification—that he was lying in his bed when she came in, with his face to the wall, and while his back was towards her she kissed him on the cheek, and said, "His face is like his father's, and his ears are like his uncle's"—and if they had gone on to say he could not tell whether he was affected or not, or whether HOLMES and LEETE—strange lawyer and strange friend—were in the room; suppose he published that, what do you think Colonel LUSHINGTON—a man of the world—would have said? He would have said, "This is a very curious style of recognising. It is the oddest recognition I have ever heard of." They told him only that he was immediately recognised by his mother. Is it not scandalous to impose upon people in this sort of way, to induce them to give their countenance and support without telling them the honest plain truth? There is no doubt that when these visits to Alresford occurred, the place was made as amusing and lively as they could make it. In one letter he said that one trip to Alresford had cost him £50 and that he hoped it would not occur again. No doubt he kept open house for the labourers. When these rustics were there, and saw the military come in—half-a-dozen men in red coats—there could be no longer any doubt about it, and anybody who said he was not Sir ROGER might expect to be taken outside and shot at once—(laughter)—or mobbed, as my friend Mr. Serjeant PARRY suggests. (Laughter.) Now, you saw Mrs. STUBBS. She had a picture of her great-great-great-grandfather's great-great-grandfather. (Laughter.) She was proud of it. I should think in all probability the picture was noticed by FRANCIS JOSEPH BAIGENT in his history. What was more likely to take Mrs. STUBBS than to look in and say, "Ah, Mrs. STUBBS, that is not the old picture." "No; well then, walk into the parlour;" and then, "Ah, that's the old picture; I knew it again." "God bless my soul," Mrs. STUBBS would say, "Why that must be Sir ROGER to remember my old picture." Mrs. STUBBS is a weak, innocent creature; but she is a very good woman. I have nothing to say against her; but she is very easily imposed upon—not perhaps more easily than I am, because I am very easily imposed upon. (Much laughter.) But Mrs. STUBBS never dreamt that old STUBBS had been gossiping with Mr. GUILDFORD ONSLOW, and probably also with "FRANCIS JOSEPH." (Laughter.) FRANCIS JOSEPH had probably been there, and he may have had an account of the picture in his book; for aught I know, he may have cleaned it. (Laughter.) Well, are you surprised that after all this recognition Mrs. STUBBS said, "This really is Sir ROGER"? Why, if she had not done so, she would have been a very wicked old woman. (Laughter.)

The LORD CHIEF JUSTICE: I think you are adding something to her. You said "old."

Mr. HAWKINS: I beg your pardon.

The LORD CHIEF JUSTICE: The lady is not so old.

Mr. HAWKINS: Well, I will take it off again. Probably it will be published in the Hampshire newspapers, which will do her full justice. (Laughter.) Now, why don't you call Mr. STUBBS—not "old" Mr. STUBBS? You know he was in London, and he knew ROGER TICHBORNE. Now, while a man cannot remember anything, he cannot forget everything. You will find there is not one single thing in the incidents which occurred in the professed efforts of memory until some weeks after the Defendant went to Alresford. I will illustrate it by old ETHERIDGE. I think he said old ETHERIDGE had recognised him on the spot. You know the very strong language in which old ETHERIDGE denied it. He said that when he worried the cats ETHERIDGE tried to hit him with the flail. That was just the wrong story. That was just what ETHERIDGE did not do. ROGER TICHBORNE'S dog went after the cats, and he struck the dog—a very different story altogether. Well, the Defendant went to see people like the WALSHES, and the STUBBS's, and the NOBLES, and old GUY, but he resolutely and absolutely refused to see ROGER TICHBORNE'S dearest and best friends, viz., ALFRED SEYMOUR, Mrs. TOWNLEY, Mrs. GREENWOOD, Mrs. HIBBERT, Mrs. BOUVERIE, Lady RAWLINSON, or any of those other ladies who had been most kind to him during the time that ROGER TICHBORNE was living at home. There was one old friend, I mean WALTER STRICKLAND, of whom you will find repeated mention in ROGER'S letters to Lady DOUGHTY. Well, WALTER STRICKLAND called to see him on the 12th of June, 1867. The Defendant wrote:

"Captain STRICKLAND called yesterday. I had been forewarned that it was intended to play off a trick on me, and I would not see him. He swore awful because I would not see him."

A JUROR: Is WALTER STRICKLAND alive?

Mr. HAWKINS: No; he is dead.

The LORD CHIEF JUSTICE: I think the Defendant said he hoped they would all die, or something of the sort.

Mr. HAWKINS: Yes, my lord, in a letter to Mr. ROUS.

"MY DEAR ROUS,—I received your most kind letter. Please remember me to Mrs. ROUS and all friends. I see I have one enemy the less in HARRIS's death. Captain STRICKLAND, who made himself so great on the other side, went to Stonyhurst to see his brother, and died there. He called on me a week before, and abused me shamefully. So they will all go some day."

This was not exhibiting the same charitable spirit he showed when he said, "God help those poor 'pergured' sailors" (Laughter.) Well, not only did he avoid poor Captain STRICKLAND, but the people he had invited to see him—Major BOTT and Mr. BETTY; he would not see them. Do you know why that was? I do. I will tell you. He had seen Captain M'EVOY the day before, and he could not recognise him. He was not ready for Captain M'EVOY, and so he was not ready for Major BOTT and Mr. BETTY. It was the very same thing with Captain POLHILL TURNER, who had asked the Defendant to go and lunch with him, and the Defendant had said he would go—but he did not. He was not sufficiently primed. He says to his "mamma," "I do not intend to go and lunch with POLHILL. I told you I would not go and I am not a-going." You know that in the spring of 1867 HOLMES filed a bill in Chancery to receive the rents of the estate. No sooner was it filed than the Defendant addressed to Lady TICHBORNE some few words of caution. "Be very careful what you say, now the bill is filed, to anybody who calls on you." Why should Lady TICHBORNE not speak the truth now that the bill was filed? If you were the true man the more your case is ventilated the better it would be for you. Again, in July he writes, "Do not let any of

* Mr. GUILDFORD ONSLOW, writing on the Claimant's forgetting his French, says:—"As to his forgetting his French, would any one but the real man have dared to face Paris and his French mother, having forgotten that language? Nothing is more common than a man to forget a language if he never hears it spoken for years. Does he forget his French? He forgets to pronounce, but he will, as I have heard him, reply to anyone in English who speaks French to him. His idioms are all French; his constant usage of the French words 'carte blanche,' 'coûte que coûte,' 'tout ensemble,' &c., &c., when at a loss for a word; his pronouncing 'a' as 'r,' all point to his French origin; but when we come to know the fact that he never knew French except by rote as a parrot, and we remember MOORE's diary that proved *he was fast forgetting his French on board the French* 'Pauline,' that he was never allowed to speak French at Stonyhurst, there is nothing strange in forgetting the little he once knew. Look at the scores of English children born and bred in India, speaking Hindostani as their native tongue, who after a few weeks' residence in this country forget it altogether. I know an instance of an Englishwoman who married the German engineer of a steamboat on the 'Gmunden See' that forgot her native language in four years. If the talented LIVINGSTONE forgot how to ask for a glass of water on board the 'Frolic' after four years in the heart of Africa, surely we can excuse the Claimant in forgetting French after twelve years in the heart of Australia, especially when we consider LIVINGSTONE was a scholar and TICHBORNE a dunce."

the other side know where I am, or what I am doing." We didn't know then. We do now. He was going about the country with MARKS, with CARTER, and M'CANN, and getting hold of as many officers as he could. Some of them was called at the last Trial. Where are they now? The only one who is called is Major NORBURY, whom I shall have to discuss when I come to that part of the case. We know now, and he does not dispute it, that not only had he been getting a list of officers, and where they had been stationed, but he had been getting lists of the crews of the 'Bella;' of the army; and the estates; deeds and the pedigree. There was Stonyhurst he could not get much information about. He got a little—the list of the Jesuit fathers there. At first the Defendant would not admit that, but he admitted it at last, or produced it. There was another gentleman very busy. Busy Mr. BULPETT. He had given the Defendant a credit of £500. He thought it was after he had seen him; but the Defendant's letter says it was before. I will tell you why I am disposed to attach credit to the Defendant's letter—a very rare thing. Because it was dated the 6th of January, and the date is not likely to be have been wrong. BULPETT said he had a very great interest in this case. He did not know ROGER. Was ROGER a great friend of BULPETT'S? No. He never exchanged a word with him, and only met him in the hunting field. What should make him take such an interest in the Defendant in 1867? But he did. We have it in GOSFORD'S evidence, and who, I think, has been scandalously treated in the course of this Trial. I say there has been a wicked perversion of facts with regard to him. I call your attention to his position. Mr. GOSFORD is a person who has been connected for a long time with the TICHBORNE family, and was on the most friendly terms with Lady DOUGHTY up to the last hour of her existence. It is affirmed that he was guilty of feloniously embezzling his employer's money. I say the charge is wickedly and scandalously false, to use no stronger terms. In every relation Mr. GOSFORD has behaved like a man of honour and a gentleman. He had misfortunes that he could not have avoided except by a little more prudence. He placed his money in a bank, and his credit suddenly stopped. He did what many an honourable man would have shrunk from for want of courage. He said "I gave up all I had got. I sacrificed even my children's education. I left the house without even half-a-crown to pay my railway fare." I say it is wickedly and scandalously false to charge a gentleman like Mr. GOSFORD with being a felon, and with embezzling his employer's money. Now, GOSFORD had seen the Defendant at Gravesend, where he put a variety of questions to him. GOSFORD was to some extent under the thumb of BULPETT. BULPETT invited GOSFORD to dine with him, and he went, thinking it would not be more than a friendly dinner of two or three. After dinner GOSFORD proposed a stroll, to which, however, BULPETT objected, and presently three persons came into the room. One of them was the Defendant, and HINGSTON and WHITE were with him. If GOSFORD said one single thing that was not true, why were they not called to contradict him?

The LORD CHIEF JUSTICE: Counsel said he did not call them because they were friends of Mr. HOLMES.

Mr. HAWKINS: That is a very weak pretence. I cannot see what interest HOLMES has against the Defendant. It has been suggested that we have been getting documents from him; but he had a *subpœna duces tecum*, and he would not dare to refuse the documents. HOLMES had £5,000 owing to him in his bill of costs. If HOLMES could only establish that that man is ROGER TICHBORNE he would have the means of getting it.

The LORD CHIEF JUSTICE: Under any circumstances.

Mr. HAWKINS: He might take a bill. I wonder whether Mr. WHALLEY would endorse it? (Laughter.) The Defendant's argument on that point is not worth answering. "But," said Mr. BULPETT to Mr. GOSFORD, "you are mistaken. Try him about the same things you tried him with the other day. You must have been a little in a hurry." He did try him again about the dogs. The Defendant knew nothing about them in January, but now he said, "Spring and Piecrust." Yet even then he forgot poor little Scratch, given to Mrs. GOSFORD. The rabbits were all right then; you can learn all about them in six months. But about the dog-cart he was still at sea. "Ah, yes," he says, "I recollect when I upset you in the dog-cart." Well, he didn't. He then asked him about the contents of the Sealed Packet, which the Defendant could not remember. The cross-examination of the Defendant on his affidavit in the Court of Chancery took place on the 30th and 31st of July, and on the 1st of August. The Defendant was represented by my friend Mr. Serjeant BALLANTINE; and my friend Mr. CHAPMAN BARBER attended, to submit him to cross-examination. I was there on the part of the trustees, but had no instructions to cross-examine, except on one or two special matters. There were present amongst ROGER'S old friends and acquaintances, Colonel GEORGE GREENWOOD, who says he placed himself on the stairs, in the light, and the Defendant passed him closely, and saw him, but took no notice of him. Colonel GREENWOOD followed into the room, and he says, "I thought I saw BAIGENT point me out to him." It is impossible that ROGER TICHBORNE should have required to have pointed out to him "his old friend GEORGE," as he used to call him. That is not the only person who was there, and who had been perfectly well known to ROGER TICHBORNE. There was General JONES, but the Defendant did not recognise him; Captain POLHILL TURNER, whom he would not face at Bedford, and Captain FRASER, whom at that time he had not been near. There was not a sign of recognition on his part. Captain POLHILL TURNER had invited the Defendant to lunch on the 10th of July, but the Defendant had put him off. I should have thought, with the feeling of a high-bred gentleman that he would have thought it due to Captain POLHILL TURNER to offer some apology; but it is a little rude to pass him on the stairs and take no notice of him. I will tell you why he did it—not because he was rude, but because he did not know his man. You will find here and there in the cross-examination that there is a little knowledge displayed of ROGER TICHBORNE'S life. There is no wonder at that for one would expect to find some after the tuition he had received. The wonder is, not that he knew so much, but that he knew so little. He said here that the first house he remembered was in the Rue de la Madeleine. When his own Counsel, in the Court of Common Pleas, asked him, "What was the first house you remember?" he said, "The Rue de Ferme." My friend, the Attorney-General, in cross-examination, said, "Do you mean the Rue de Ferme; because in turning to your examination in 1867, I find you said it was the Rue de la Madeleine?" and he said, "That was my impression then." The Attorney-General then pressed him and asked him upon which side of the river it was, and he first said one side and then the other, and then that he did not know for certain. "At all events," he is asked, "there is one thing you can say, and that is whether the Rue de Ferme and the Rue de la Madeleine are the same place?" and he said he could not tell. Then he said that CHATILLON was his only tutor, and that he could not remember the names of any of his associates or playmates. There was an adjournment of a whole night before he was re-examined, and then he said he did recall to memory the name of Mr. TALBOT CONSTABLE. He says, "I don't remember just at the present time the name of one single person in Paris with whom I had conversation," he says he remembers a tour in France, but forgets where the tour was, and he cannot tell a single thing he saw, a single place he went to, or a single occurrence during the tour. Again there was an interval of a night, and on the following morning he said, "I remember that the tour was in Brittany, and that at a place something like 'Ponic' I fell from some rocks and cut my head." Of Stonyhurst, he said he did not just now remember the names of any master or teacher, or who was the principal of the college, nor a book that he learnt from, nor his course of study, nor the examinations, nor the number of students, nor the name of a single boy who was in his class. He remembers (here we come to what never happened) the names of PETRE and ARUNDELL as of two young men in the college, but who they were he did not know. It happened that the name of PETRE was not a name known in the college when ROGER TICHBORNE was there. There were two ARUNDELLS; but for ROGER TICHBORNE to say he did not know who the ARUNDELLS were was a farce. He recollected a priest named WALMESLEY. The re-examination lasted part of one day and part of another, and he could recollect nothing during the whole of that afternoon; but upon the following morning he said that he was speaking of the whole of these priests only the other day. I have no doubt he was, because he got the whole of them on a paper which JOHN HOLMES had given him of the Jesuit Fathers. He says, "Since I was examined yesterday I have carried my memory back, and I now remember McCANN, a priest, two brothers COOPER, GLUNDERELL, an Italian, and a Spanish gentleman, a friend of his father's, whose name he had forgotten." If he could carry his memory back to a Spanish gentleman whose name he did not remember, I wonder he did not remember General MANDREVILLE, because he was very much attached to him, and was constantly dining with and visiting his father. We know perfectly well who ROGER TICHBORNE'S friends were; we know Lord BELLEW was constantly with him, a Mr. DEASE and LE BRASSEUR. These are names he does not even refer to. With regard to the voyage in the 'Pauline' from Havre to South America, he evaded the question at first. He told a very strange story of an albatross striking him in the eye. He says, as they were pulling in an albatross that they had caught it flapped its wings and hit him in the eye, and he remembered no other accident happening to him on board a vessel. I cannot help calling your attention now to another passage in his cross-examination by the Attorney-General. In July, 1867, he swears the accident was caused by the wing of an albatross; but when he is asked, after the examination of MOORE, the same question, he says it is caused by a fish-hook hanging on a door; it stuck in his eyelid and had to be filed out. He did not mention that in his examination by Mr. CHAPMAN BARBER in July; then it was an albatross; but in cross-examination by the Attorney-General he said it was a fish-hook. I have no wish to tell you what MOORE said. He was examined by Mr. GIFFARD as to what passed on the voyage out, and if he was asked about that and it was answered, it is easy to see how the change in the story came about. I propose to pass rapidly over the next three or four years which followed, because it is really only relating to the same story; and with gentlemen like yourselves, who have the evidence before you, and who have paid such attention to it as you have, it would be too bad for me to detain you by mere repetition. In the autumn of 1867 he was about to take Itchin Abbas, as he says "It is so secluded, and there are no neighbours to annoy us. It will serve my cause, as all the gentry around will call on me." Lady TICHBORNE thought otherwise, and would

not consent, so that the idea was abandoned. We know in 1868 Miss BRAINE became one of his supporters, and became a constant visitor at his house; and we know from the voluminous correspondence between the Defendant and Lady TICHBORNE and the Defendant and Mr. ROUS, who were the persons by whom he was surrounded—ROUS, HOLMES, TUCKER, and FRANCIS JOSEPH BAIGENT, who would not give us the benefit of his knowledge; and he was attended by his murky satellite, my friend, old BOGLE. (Laughter.) Whenever a Carabineer was heard of he was hunted like a jacksnipe on a common. (Laughter.) I do not propose to take you through the evidence of old Carabineers, but there are two or three whom I cannot pass over. In the spring of 1868 Lady TICHBORNE* suddenly died, and upon her death hundreds of letters came into the possession of the Defendant. I wonder whether there were diaries too. GOSFORD says that ROGER TICHBORNE used to make copies of his diaries, and send them over to his aunt. There were abundant means, therefore, of ascertaining a good deal of ROGER TICHBORNE'S life, with one exception. There was very little information to be got from Stonyhurst. Possibly they saw the outside of the place, but there is no proof they did. Well, now, gentlemen, I have endeavoured as briefly as I could to call your attention to the period which elapsed between the Defendant's discovery at Wagga-Wagga and the cross-examination in the Court of Common Pleas. I have not thought it necessary to go minutely into the last two or three years. The question is, what was the state of the Defendant's knowledge during the earlier months after his first coming upon the scene? I have carefully abstained from touching on the military Witnesses, as I propose to do that separately. What happened after the first year and after Lady TICHBORNE'S death I really care not. I cannot undertake to prove to you how he got all the information. I am not bound to show the sources from which every single bit of his knowledge was derived, but if I show you one or two you must draw your own inferences as to where the rest was obtained from. As I said in my opening, if you see a broad river flowing into the sea, you can find out where a good deal of the water comes from, and you can only infer that the other rivulets which help to swell the stream come from similar sources. In the same way if you see a house being built with a certain sort of brick up to the second storey, and if you see the third storey composed of bricks of precisely the same colour, size, and appearance, you would naturally suppose that they came from the same kiln, unless you had evidence to the contrary. I should be undertaking a task that would be almost endless if I were to undertake to show you how the original ignorance of the Defendant was gradually removed. It seems to me a very striking and remarkable fact that, with the exception of Mr. BIDDULPH, no relation of ROGER TICHBORNE has been called before you by the Defendant. On the part of the Crown I have called almost every relation that knew him except four or five. It has been said that I did not call Lord ARUNDELL of Wardour, but he could have thrown no more light on the subject. I have called all those who were intimately acquainted with him. I have called before you those most intimately acquainted with him in Paris, except M. DUPANLOUP with whom ROGER was only a few days, and M. JOLIVALT, who could throw but little additional light upon the subject, and who would be more likely to be in the interest of Lady TICHBORNE.

The LORD CHIEF JUSTICE: Sir JAMES *calls him a scoundrel in his letter.*

Mr. HAWKINS: Yes, he speaks of what had been lavished on that scoundrel JOLIVALT. The Defendant has only called three persons. One of the Witnesses was Miss COATES, who met him when she was 13 and he was 16. She was called to prove that ROGER TICHBORNE occupied rooms in a cottage, and the proof was her seeing him in the tart shop. Some books were also produced, showing that a doctor had attended him for some trifling ailment. I have called some of ROGER'S most intimate and dearest friends; the Defendant has called none but the most casual acquaintances. BAIGENT he won't call, and he won't call Sir TALBOT CONSTABLE, although he was called on the last Trial. It was said I read a letter with the view of deterring Sir TALBOT CONSTABLE from coming forward. Sir TALBOT may take my word for it that I should never dream of examining a gentleman on his private affairs; and that I had no intention of doing so. But it is very easy when you want to get rid of the observation of not calling an important Witness to suggest all sorts of things which have no foundation. I shall call your attention to one or two letters hereafter, and ask you to draw your own inferences. Upon the subject of ROGER TICHBORNE'S military life, I have called before you many of the officers who were his daily and hourly companions, with some men from the regiment. The Defendant has called before you two officers only and a whole host of private soldiers. He has omitted to call Major HEYWOOD; Captain SHERSTON, and others, whom he took great pains to get at the last Trial.* They have not called JOHN MOORE, whom they put into the box at the last Trial, and in whom they had great faith.

The LORD CHIEF JUSTICE: What evidence is there that he was called before?

Mr. HAWKINS: It appears in the cross-examination; and the Defendant's Counsel spoke of Witnesses who had deserted them. Gentlemen, permit me to withdraw those names.

The LORD CHIEF JUSTICE: They undoubtedly produced MOORE in Court for the purpose of identifying him.

Mr. HAWKINS: Gentlemen, the reason for not calling him is very obvious. I will now call your attention to the evidence of the various sets of Witnesses. First with reference to those who have been called on the part of the Crown to speak to ROGER'S early life in Paris. Is there one of those gentlemen who is not fully entitled to your credit? Is there one who can be said to possess any interest in the result of this Trial? Is there one who did not to the last entertain for poor Lady TICHBORNE sincere regard, although they declined to encourage her delusion? I think the Abbé SALIS was asked—was she not a truthful and honourable lady, and he said in every respect except the tête malade. Is a man to be attacked because he speaks the plain truth? I don't object to a body of persons being called hard names when they are deserved, because hard names, when they are not deserved, always recoil upon the heads of those who utter them. Then these Paris gentlemen—they are as honourable as any to be found in the universe. What is to be said against them? The Defendant's Counsel cannot dispose of them simply—for the purpose of pleasing Mr. WHALLEY—by calling them "infamous priests and night owls." That does not dispose of their testimony, though it seems to me, as it seems to many, to dispose of Mr. WHALLEY'S sanity.

Mr. Justice MELLOR: "Infamous priests and night-owls" I think was the expression used.

Mr. HAWKINS: Yes, my lord, that is right. But that does not dispose of this testimony. If it disposes of anything—if that

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* "MY DEAR MAMMA."

Mr. HAWKINS set the example, which the Lord Chief Justice followed, of pointing out that on the real ROGER becoming a student at Stonyhurst, he ceased to address his mother as "My dear mamma," adopting the more manly "My dear mother." It is urged against the Claimant, and as a proof that he is an Impostor, that he used "My dear mamma" in his letters, until it became nauseous. But it is entirely overlooked that in his first letter from Wagga-Wagga to Lady TICHBORNE, he addressed her as "My dear mother." It is also overlooked that when he went to Stonyhurst, he did so against the wish of his mother; that he then, for the first time in his life, sided with his father and the TICHBORNE family; and that afterwards he wrote to his mother several letters as free from refined courtesy and the feeling a son should entertain for a mother as we can well imagine. So much did Lady TICHBORNE seem to feel this, that for twelve months she never answered one of her son's letters. The human heart is at all times a puzzle. When the Claimant returned to England, the hostile feeling had died away. His father and brother were under the cypress leaves; KATE DOUGHTY was married, and the only being he had to love of those he knew in 1852, was his mother. She was his one great friend, and if—presuming him to be the real ROGER—the old kindly "My dear mamma" came back to him—if he thought of her only as she was when he was young—if he felt that she tended him as if he were her boy again—then why wonder, and why derisively laugh at "My dear mamma?" It has been pointed out, as a proof that the Claimant cannot be ROGER, and that he hoodwinked the old lady by professed affection, from the fact that he uses "My dear mamma" no less than fourteen times in one letter. The clever people overlook the fact, stated by Sergeant BALLANTINE in the civil suit, that in one of the real ROGER'S letters to Miss DOUGHTY, he uses the phrase, "My cousin KATE," no less than thirteen times in one letter! This habit is, we think, a marvellous "internal" proof—to quote the Lord Chief Justice—that the Claimant and the real ROGER are one. The use of "My dear mamma,"—bearing the explanation we have given in mind, tells, we submit, in his favour, instead of against him.

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* WITNESSES FOR TICHBORNE.

The two Misses ONSLOW, of Upton House, near Tichborne, sisters of Mr. GUILDFORD ONSLOW, knew Mr. ROGER TICHBORNE well in former days at their father's house, where he was in the habit of visiting. They recognized the Claimant as their old acquaintance the first moment they saw him, and he as quickly recognised them, since which he has been a frequent visitor at Upton House. These ladies naturally shrank from encountering the ordeal of the Witness-box, after the insolent buffoonery of Mr. HAWKINS, whose aim was to intimidate every one who spoke on behalf of ROGER TICHBORNE. Many other ladies and gentlemen in Hampshire would have come forward and given their evidence, but were deterred by the same reason. We believe we may name among them one of the shrewdest and cleverest ladies in Hampshire, Lady RODNEY, who recognised the Claimant as her old acquaintance, ROGER TICHBORNE, and would have come forward as a Witness at the Trial at Bar, but that she naturally shrank from an encounter with the "Queen's Jester," and was also personally assured by Dr. KENEALY that her presence in Court was unnecessary, as the Jury were bound to acquit. Lady MARY LONG also fully identified the Claimant as the real TICHBORNE; the Marquis of QUEENSBERRY never doubted it; the Duke of LEEDS has openly proclaimed that he is not ORTON; and half the House of Lords have declared that he has not had a fair trial.

is Mr. WHALLEY'S view of the matter—it rather disposes of Mr. WHALLEY'S sanity than anything else. (Laughter.)

The LORD CHIEF JUSTICE: I don't think you are entitled to fix every abuse which the Defendant's Counsel was pleased to lavish on persons connected with this Trial upon Mr. WHALLEY.

Mr. HAWKINS: Except because he was here, my lord.

Mr. Justice MELLOR: Let me remind you that he has enough to answer for. (Renewed laughter.)

Mr. HAWKINS. So he has, my lord. I will withdraw what I said.

The LORD CHIEF JUSTICE: Don't let us charge any one with having sanctioned all the abuse that has been used. It falls only on the shoulders of those who uttered it.

Mr. HAWKINS: I won't. I leave the matter in your hands, gentlemen, and will say no more about Mr. WHALLEY. But you have heard his own testimony.

Mr. Justice LUSH: He did say that he believed "all this was due to a Popish plot."

Mr. HAWKINS: I will not. At all events it does not dispose of the testimony of those honourable and respectable gentlemen. If those Witnesses spoke truly, what becomes of ROGER TICHBORNE'S life in Paris as he describes it? * The Defendant said that his first home was the "Rue de Ferme," and he invented for Sir JAMES TICHBORNE a home which Sir JAMES never occupied. He pretended to remember ROGER TICHBORNE'S father living in a house, and I think I am correct in saying that he remembers ROGER TICHBORNE being educated there, in the Rue des Pyramides. He forgot the room he lived in, and remembers the Abbé SALIS as ROGER TICHBORNE'S confessor, although ROGER TICHBORNE never confessed to him. He remembers CHATILLON as ROGER'S only tutor in Paris, and ignores DUPANLOUP, ignores JOLIVALT, ignores General MANDREVILLE (the intimate friend of his father), he ignores GOSSEIN (the valet who had been in his father's service for so many years) and ignores the Pére LEFEVRE, who was ROGER TICHBORNE'S confessor, and to whom he confided his little secrets, and who told ROGER TICHBORNE, as you remember, the story of how his hair had suddenly turned grey, and to whom ROGER TICHBORNE used to take little offerings on St. ALEXIS-day, for the poor; he professes to remember the relic given to him on his first communion—which it was not, and forgets the present of a watch, which was. The man who says he remembers the DE BRIMONTS, and who said, first, the Baron DE BRIMONT was his mother's uncle, and then says that is not true; and, then, I think, it was his father's relative— and then he does not know whether he belonged to the father or the mother; who forgets his riding school and trips to Brittany; who swears he was never in the Channel Islands in his remembrance, though we know ROGER TICHBORNE was there with his little brother, *Belle Tete*, from his own letters; who forgets his own mother's tongue, which he spoke alone until he was 16 years of age—forgets it so that he tells us now down to the very alphabet, who cannot even read his own letters; who forgets the name, nay, the very person of a clergyman with whom he said, in the course of his cross-examination, he had been keeping up an intimate correspondence after he left Paris; the man who forgets all these things, and when challenged by my learned friend, the Attorney-General, in default of memory of any one of the things which I have called your attention to—when challenged to name one single little incident of all his Paris life, says, "I really cannot do so;" that man, I say, cannot be ROGER TICHBORNE.

[The Court then adjourned for luncheon].

After the Court reassembled,

The FOREMAN said: I wish to know, my lord, whether it would be convenient to meet to-morrow morning at 11. I am obliged to go into the country.

The LORD CHIEF JUSTICE: At any time that any of you gentlemen desire an arrangement of that kind, we must endeavour to accommodate you.

Mr. HAWKINS: Perhaps your lordship will allow me to call your attention to a matter which has been before the Court this morning. I have an affidavit of the editor of the 'Daily News,' who produces the original of what was referred to. It declares that the letter was enclosed in an envelope, which he believed came from Mr. WHALLEY, and in consequence of that belief, he sent the slip forward for publication, having first struck out the first paragraph of the letter, as appears by the said printed slip marked "A," and that he had no intention of committing any Contempt of Court, and if it had been done, regretted having done so. My lord, I have also an affidavit of Mr. POLLARD, in which he says:

"I, WILLIAM HENRY POLLARD, one of the clerks in the solicitor's department of the Treasury, make oath and say:—1. That the original letter of Mr. WHALLEY to Mr. HENDRICKS (formerly Solicitor for the Defendant) of the 28th August, 1873, a printed copy whereof is hereto annexed marked 'A' is I believe now in the possession of the said Mr. HENDRICKS, who has shown the

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* THE UNFAIRNESS OF COLERIDGE AS TO ROGER'S PARISIAN RESIDENCES.

Of the numerous instances in which the Solicitor-General COLERIDGE used the most shameful unfairness towards the Claimant in cross-examination, we direct special attention to that which refers to the Claimant's knowledge of his father's Parisian residences:—

"You said that the Rue de Ferme was the first place you lived in. Will you swear that Mr. and Mrs. TICHBORNE *ever* lived in the Rue de Ferme in all their lives?—No, I won't; my recollection is so bad that I won't swear to it.

"When Mr. GIFFARD, your own Counsel, asked you the first place you remembered, why did you say the Rue de Ferme?—Because I believe so.

"What makes you have that belief?—It is impressed on my mind, or I shouldn't have said so.

"But you won't swear it?—No.

"Let me remind you of what you said on another occasion. You made an affidavit in Chancery on the fifth of July, 1867, and on being cross-examined on that afterwards, you appear to have said that the first place you remembered in Paris was the Rue de la Madeleine. What made you say so?—I spoke from the impressions on my mind.

"And when you were examined by Mr. GIFFARD the impression on your mind was that the Rue de Ferme was the place?—Yes.

"They both can't be correct. Which is right?—I can't say.

"Don't you remember where you first lived in Paris?—My recollection of Paris is gone.

"I must trouble you to see whether it is entirely gone. You were sixteen years there you know. In 1867 your impression was that the Rue de la Madeleine was the first place you lived in, and in 1871 you think it was the Rue de Ferme. What occurred between these years to alter your impression?—I can't tell you.

"You can't tell me which impression is right?—No.

"Will you swear to a single residence your father and mother had in Paris between 1829, when you were born, and 1845 when you came to England?—No answer.

"Not one?—I don't recollect.

"You won't put me off in that way. Do you mean to say that you, a boy of sixteen years of age in 1845, cannot tell the Jury one single place in Paris where your alleged father and mother lived?—They lived in the Rue St. Honore.

"Will you swear that they did?—Yes.

"Where is the Rue de Ferme?—It runs into the outskirts of Paris.

"Where in the outskirts?—I have no recollection now; Paris is so much altered.

"Whereabouts was the Rue de Ferme?—I have no recollection.

"What do you mean by saying that it runs into the outskirts?—I mean the suburbs. My recollection is bad, and the more you go on the more you confuse me.

"I don't want to do it. I want to know on which side of the Seine is the Rue de Ferme. Is it the left bank or the right?—Do you mean coming up the town? When I was at school we always counted the river down stream.

"On which side was it?—It would be on the right side. I believe so, but I am not positive.

"You lived sixteen years as a boy in Paris; you went about Paris, I suppose, like other boys; and you lived for some years, as you say, in the Rue de Ferme. Do you really mean to tell me that you cannot say on which side of the Seine was the street in which as a boy you lived for years?—I was very young then. I have no distinct recollection of it.

"You told me that the Rue de Ferme ran into the outskirts. Into which suburb did it run?—I don't know.

"*Is there such a street in Paris—or, rather, was there such a street?*—Certainly."

The Solicitor-General here had the audacity to ask *if there ever were* such a street as the Rue de Ferme—thereby implying to *the Jury* that there was not and never had been any such street in Paris. Hear, however, what the Lord Chief Justice says in his Summing-up: "He (ROGER TICHBORNE) was born when his parents lived in the *Rue de Ferme*, and it is not unnatural to notice the residences of his parents in Paris, as they were made part of the Claimant's cross-examination. These residences could be traced in the evidence, and he was born in the *Rue de Ferme!* In 1833 they removed to a street in the neighbourhood of the *Rue Neuve de la Madeleine!!* In 1837 they removed to the *Rue St. Honore"!!!* The Rue de la Ferme, the Rue de la Madeleine, and the Rue St. Honore, were three localities named by the Claimant correctly, yet the Solicitor-General, to his eternal shame, not only tried to discredit the Claimant's memory in these particulars when correct, but to deny the very *existence* of the *Rue de Ferme*. The Claimant, with all the Solicitor-General's sophistry, was right, according to the Lord Chief Justice himself! Could the boorish ORTON, of Wapping, know anything of Paris? Yet the Lord Chief Justice of England, while practically admitting the truth of the Claimant's statement as to Mr. JAMES TICHBORNE'S Parisian residences, did not, to the extent of one poor word, instruct the Jury, as he ought to have done, that the Claimant's answers were an excellent test of his being the real ROGER TICHBORNE, and that Solicitor-General COLERIDGE had deliberately suggested by his questions what was untrue.

same to me, and has furnished me with a copy thereof.* 2. The said original letter is in the handwriting of Mr. GEORGE HAMMOND WHALLEY, M.P., of Plas Madoc, as I have been informed and believe."

The LORD CHIEF JUSTICE: Then let a rule be drawn up calling upon Mr. WHALLEY to appear and answer for his Contempt on Friday morning.

Mr. HAWKINS: At the sitting of the Court?

The LORD CHIEF JUSTICE: Yes.

Mr. HAWKINS: Gentlemen, I now pass on to the Stonyhurst evidence, and I propose to deal with that with as much brevity as I have observed in dealing with the Alresford evidence, for when one comes to look at the Stonyhurst evidence given on behalf of the Defendant, one finds in it no substantial contradiction to what has been deposed to by the Witnesses on the part of the Crown as to ROGER TICHBORNE'S Stonyhurst life. If it be true, as Sir JOHN LAWSON, and the other gentlemen from Stonyhurst have deposed, that ROGER TICHBORNE'S father took him to Stonyhurst, as Mr. SEYMOUR'S letter shows beyond all question that he did; if it be true that during his residence there, with the exception of the first week or two, he occupied a separate room in the seminary of St. Mary's Hall, in which separate room he slept and studied, as his own letter to his mother shows he did; if it be true that there was no river adjoining the College grounds, that there were at the outside but from twelve to fifteen philosophers at a time in the establishment, and that among ROGER TICHBORNE'S friends and fellow-collegians were Lord BELLEW, Mr. EVERARD ARUNDEL, and Mr. WATERTON, who was known as "LONG TOM," and who occupied a room near ROGER'S; if it be true that there was no person named PETERS there, and we have it in evidence that there was none; if it be true that bandy was a favourite game at Stonyhurst, and that ROGER was very fond of that game, and was considered expert in it; if it be true that ROGER never had any illness at Stonyhurst, with the exception of such a passing ailment as was recorded in the books produced, and that he left the establishment in August, 1848, without a slur or a stain upon his character—if all this be true, then the man who swore, as the Defendant did, that ROGER TICHBORNE'S father did not take him to Stonyhurst; that ROGER lived for eighteen months in a cottage, which he describes as just outside the college; that after that he lived in the quadrangle, there having been no place known by that name; that he never lived in the seminary (the Defendant not even knowing the name of the seminary where ROGER dwelt); that the number of philosophers was between 80 and 90, while we know that it never exceeded from 12 to 15; if it be true that the Defendant confessed himself utterly ignorant of the appointed hours and of the studies, such as they were, in which ROGER was engaged; that he confessed his inability to name a single book which ROGER read; that he pretended to have learnt Hebrew, which ROGER never did; that he was ignorant of the very name of bandy, asked if it were part of a building, and the next day, being candid enough to acknowledge that he had looked in a dictionary, said it was "hockey"; that he had no recollection of JOHN BERKELEY, whose death excited so much deep feeling among the students; that he professed to recollect the name of PETERS, who was never at Stonyhurst; and that he wickedly insinuated that ROGER was, both at his entrance into the establishment and just before leaving it, confined to his room, if not to his bed, by a discreditable illness—an insinuation which is absolutely refuted by all those who could give information on the subject——

The LORD CHIEF JUSTICE: I think it was only his illness at the close of the Stonyhurst career which was suggested by the Defendant.

Mr. HAWKINS: *The Defendant's Counsel, my lord, suggested the other.*

The LORD CHIEF JUSTICE: *I am anxious that the Defendant should not suffer through any mistake.*

Mr. HAWKINS: Gentlemen, it is quite right that the Defendant should not be prejudiced by his advocate's defence. (Loud laughter.) It is quite true that the Defendant himself simply suggested that ROGER had a disease on leaving the establishment; but it was suggested by his Counsel, in order to extricate the Defendant from what I should have thought was quite difficulty enough, that there were two occasions on which this happened. Disregarding, however, what his advocate said, I say that the Defendant himself wickedly insinuated that ROGER had a discreditable disease when he left the college, and that there was not a shadow or particle of pretence for that suggestion—I say that the man who confesses such ignorance cannot possibly be the young ROGER TICHBORNE who was at Stonyhurst from 1845 to 1849. There were two or three Witnesses called, and two or three minutes will suffice for me to deal with their testimony upon the Stonyhurst part of the Case. I have already disposed of the evidence of JANE COATES, but I must mention Mr. HOFLAND, who was drawing-master at Stonyhurst, and met ROGER occasionally there. He heard nothing of ROGER after he left until 1872, and then he could not recognise him, because he was so much altered. By that he meant, in fact, that there was no likeness between ROGER and the Defendant. Then he is attracted by conversations. Now, what are the conversations which took place? If they had occurred in 1867 it would have made a difference; but they took place six years after the Defendant arrived in England. We know that in the beginning of 1868 he went with Mr. BAIGENT to the north, and amongst other places to Preston, where Mr. SEGAR lived. I say, then, that no value attaches to these conversations, because nothing was said that could not have been picked up from SEGAR with BAIGENT'S assistance. If he did not pick it up at Preston why did they not call Mr. BAIGENT to say so? I will give you a striking proof that it must have been picked up. He said he remembered first that Mr. HOFLAND had lost a limb; and it is not very difficult when you see that a man has not got a limb to remember that he has lost it. (Laughter.) He said he remembered that Mr. HILL was Mr. HOFLAND'S partner, and that was perfectly well known; and he remembered, moreover, that old BETTY kept a small inn at Hurst-green. This is in 1872, and he had picked up Hurst-green since 1871. In his cross-examination by the Attorney-General he was asked, "Where is Hurst-green? Do you know the name?" and he replied, "No, I don't know where it is." No boy at Stonyhurst could have forgotten where it was; and if you are to take the evidence of Mr. HOFLAND in 1872 the Defendant said he remembered that old BETTY kept an inn there. I think your attention should be called to Mr. WATERTON. I dare say not one of you, if your attention were called to one of your old schoolfellows, would mistake him for the boy who cleaned your boots. (A laugh.) I don't suppose, either, that "Long TOM"—Mr. WATERTON—was a gentleman likely to be forgotten; but let us see what he says about him. He was asked, "Did you know a man of the name of WATERTON?" He replied, "I think he was one of the attendants." Then he said he had forgotten all about him—he did not know he was a gentleman, and went by the name of "Long TOM." But in 1872 the Defendant remembered all about him.

Mr. Justice LUSH: His was the second name he mentioned.

Mr. HAWKINS: It was my lord. It would be unjustifiable for me to go into minute details. I do not make any attack upon Mr. HOFLAND, but I say that his evidence is absolutely worthless. He was simply a gentleman who was captivated by an appearance of knowledge which had been acquired by the Defendant since his previous examination. I propose now to deal with a body of Witnesses, whom I see before me in my mind's eye and dread to face them—but there is nothing like making a bold charge; after which I purpose to attack the noble army of Carabineers—(laughter)—single-handed. (Great laughter.) The Witnesses to whom I refer may be divided into two classes; and first there are such as remembered him as a young man at Tichborne and Upton, and who speak only to their recollection of his person. As to those I will not repeat what I said with respect to the Wapping Witnesses, for I am sure that if you think there is anything in my argument you will do me the justice to apply it here. There are some, however—not many, but one or two—who profess to speak of their recollection of old days. There is, for instance, the Witness who said, that as the Defendant had been able to answer a question which he had put to him about a dog, he concluded that he must be either ROGER TICHBORNE or—well, a personage whose acquaintance one doesn't wish to make. (Laughter.) Then there is HENRY NOBLE, who had seen the Defendant with ROUS at Christmas, but who did not then recognise him. Afterwards, seeing him on the platform at Alresford Station, he asked HASTED, the butcher, who was with him, who he was. Thereupon HASTED took him by the collar; and at that moment the Defendant came up and said, "Why, this is Mr. NOBLE." I should very much like to know why Mr. HASTED just then took him by the collar. However, when the Defendant said "You are Mr. NOBLE," he replied, having previously been told who he was, "And you are ROGER TICHBORNE." Afterwards he had a conversation with the Defendant about that old oak moor—that oak moor which has been hacked and grubbed at till I suppose there is none of it left. I wonder where they got hold of that story. If there were anything in it, one would have expected that it would have been mentioned at once; but we do not hear of it till the Defendant had made two or three visits to Alresford; and in the interim old Guy had been met in the street. I must say I can't help thinking that somebody got hold of him and obtained that story from him. Then comes Mr. BAILEY, who keeps the inn at Ropley. Now, I cannot find that ROGER TICHBORNE ever spoke to him in his life before he left England, and therefore there could have been no familiar greetings between them. But his account is that he was at the station, with his back turned towards the carriage in which the Defendant was, when down went the window, and a voice saluted him, "How are you, BAILEY?"—*Como esta*, BAILEY? (Laughter.) The Witness had seen him in January, but I suppose he was standing on that occasion with his face to him, for he did not recognise him. There is another Witness, whom I mention only for the absurdity of his evidence. I mean DAVID PINK. "Do you recollect giving me a pipe of 'bacco?" says DAVID. "I do." "Then you're ROGER TICHBORNE." (Laughter.) And what do you think of SMITH, the gardener? He had not seen ROGER TICHBORNE from the day he went into the army, and he was summoned to town by Mr. GUILDFORD ONSLOW. He was taken to a passage in Piccadilly, and told to look out for the Defendant. "Mind, he is very fat," says Mr. ONSLOW, "you will hardly know him again; but if you see him, come and tell me." Well,

* Fancy HENDRICKS doing this.

the Witness sees him come out of his hotel and get into his brougham, and he recognises him at once. I daresay that SMITH takes great credit to himself as being a very clever fellow; but a much fairer plan would have been to select half-a-dozen people, one rawboned man, with high cheek-bones, as my friends from Wapping would put it, and to have asked the Witness to pick out ROGER TICHBORNE from amongst them.

A JUROR: He was requested not to speak to the Defendant.

Mr. HAWKINS: Oh, no! He was not to speak to him, otherwise he might have heard his "soft, low voice." (A laugh.) Then, there is POWELL, the music-master, who did not see him till 1868. Are you surprised that when he came into the yard the Defendant should have said, "Como estâ POWELL?"—(a laugh) when you remember that BAIGENT and all the people were there who could have told him all about POWELL. POWELL'S recognition does not, however, seem to assist him; for, looking at the Defendant, he says, "I think his hair is lighter than ROGER TICHBORNE'S."

Mr. Justice LUSH: And he says that when he was addressed by the Defendant he said, "You have the advantage of me; I really do not know you, unless you are Sir ROGER TICHBORNE."

Mr. HAWKINS: As to the other Witnesses, I may be wrong, but I declare I will not go through their evidence. I have given you a few samples, and I do not know what else I can do unless I am to take these books of the evidence—(cries of "No! no! from the Jury.) I will if you like. I am quite at your service. (Laughter.) Now I come to a gentleman, for whom I declare I have a very great affection—I mean Mr. ANTHONY JOHN WRIGHT BIDDULPH, who is as amiable, and as weak-minded a country magistrate as I ever met with. (laughter.) Mr. ANTHONY JOHN WRIGHT BIDDULPH, however, does not think himself so weak as I do. On the contrary, he thinks that having sat a great deal at petty sessions he is a master of the art of cross-examination. I will tell you how they got round Mr. BIDDULPH. Lady TICHBORNE was very anxious indeed to have the Defendant identified as her son. She had tried to find some one in Paris; but nobody would do it there. Nor would the relations in England do it. They had tried him all ways, and they said, "He's not the man." In fact, there was no member of the family that would recognise him except Mr. BIDDULPH; and he was unquestionably the best person to whom Lady TICHBORNE could have applied, for he knew least about ROGER TICHBORNE. (Laughter.) He had only known him when they were lads at school together, and he had known him for a few days at Bath towards the end

SCENES IN THE LIFE OF ROGER TICHBORNE.

No. 62.—NATIVE HUTS, NEAR MELIPILLA, SOUTH AMERICA.

of 1848, or the beginning of the next year. Mr. BIDDULPH was staying at Mr. NORRIS'S, who was as shrewd an attorney as any practising in London, and who was ultimately selected by the Defendant as attorney for his infant son. Through Mr. NORRIS an overture was made to Mr. BIDDULPH to see if he could identify him. At first Mr. BIDDULPH said he did not think he was the man; and he asked whether somebody else would not identify him who had known ROGER TICHBORNE better; however, there would be no harm in seeing him, and so a little dinner party was arranged, to consist of Mr. NORRIS himself, the Defendant, Mr. BIDDULPH, and Mr. TUCKER. This last gentleman I find described in one letter of the Defendant as a money lender; at least he says, "it would be best to go to TUCKER with his 50 per cent.," and you will admit that that looks like it. (A laugh.) In another letter he says that TUCKER is a "Protestant," and therefore unfit to be a good father. (A laugh.) In a third, still more complimentary, he describes him as a "bore;" and lastly he speaks of him as being "only a humbug." (A laugh.) So this dinner party was to consist of the Defendant, a county magistrate, a lawyer, and a humbug. (Laughter.) But before that Mr. BIDDULPH had a conference with Mr. NORRIS over their wine. Cannot you imagine the scene? Mr. NORRIS would say to him, "You know you have had great experience in cross-examination at petty sessions; cross-examine him firmly. What do you know about him?" "Well, not very much. He stayed down at Bath for over a fortnight when my mother was there." "What did you use to do? Pass Mr. BIDDULPH the champagne. (Laughter.) How did you use to amuse yourselves?" "Well, we used to smoke together at a hotel—the White something." "What did you smoke—cigars or pipes?" "Well, I remember we had curious pipes." "What sort of pipes? Another glass of champagne for Mr. BIDDULPH." (Laughter.) And so at last poor Mr. BIDDULPH remembers that they were death's-head pipes or something of the sort; and that was the way in which this county magistrate was prepared for this cross-examination of the Defendant. (Laughter.) Mr. BIDDULPH very candidly told us that he did not recognise his features, or his walk, or the twitch in his eye. But he says, "I was struck by his apparent recollection of our having met at Bath." The death's-head pipes settled him. (A laugh.)

Mr. Justice LUSH: He said, "The death's-head pipe made more impression than anything else."

Mr. HAWKINS: He did, my lord; so much so that they struck up an acquaintance immediately, and he was invited to the christening. He says he was also struck by the remarkable circumstance that the Defendant was able to point out the way in which Colonel GREENWOOD used to ride across to Brookwood. Poor Mr. BIDDULPH! it was really a shame to impose upon him in that manner. (Laughter.) It is really childish to put forward such matters. But in justice let me call attention to the affidavit which he was made to swear in Chancery. In that he is made to say that he called unexpectedly; but you know that in point of fact the interview was fixed by Mr. NORRIS, and could not have

been unexpected. I shall now leave Mr. BIDDULPH, with the remark that his testimony does not seem to me in the least degree to advance the Case of the Defendant. I come now to a very different person, and a person whom I cannot treat in the same way, a cold-blooded, crafty person—I mean Miss BRAINE. As to the value of her evidence I shall have little to say; but I cannot bear to hear a woman like that spoken of as a dignified person, as a lady against whom not a single syllable can be said, and put forward as a person on whom to place implicit reliance—put forward as a pet Witness who is to carry everything before her. Let us see what is the value of her testimony. Her acquaintance with ROGER TICHBORNE was confined to the nine days he spent at Tichborne between the 2nd and 11th of January, 1850, when he left, and from that hour until he left Englatd altogether Miss BRAINE never saw him. Yet she told us that on her first visit to Croydon on the 16th of January, eighteen years after, she at once recognised him as the ROGER TICHBORNE she had known of old. She was a governess at Tichborne-house, and it was 24 years since she went there. She used to see ROGER TICHBORNE at meals and in the drawing-room after dinner. She remembers the festivities on his coming of age. She professes to remember his appearance, and she gives of it a tolerably accurate account, which, however, she might have gathered from the photographs. She says he was sallow, with long straight hair, but gives a very hazy description of his voice. She can't tell whether it was soft, rough, clear, or muffled; but she says he had a sort of idle way of speaking, letting the words drop out of his mouth as if he were too lazy to take the trouble to speak. He had a habit, she said, of raising his eyebrows, and when she looked at him she missed the habit ROGER had of jerking his head to shake back a lock of hair; but on the second day she said she saw the jerk. She professes to remember his hands. She says that one hand had dimpled knuckles like a lady's; but with all this keen observation one wonders that she never noticed the defective thumb. One of the Witnesses stated that she had been correcting ROGER TICHBORNE'S letters; and that is a circumstance, if her memory be worth anything, she would have recollected.

The LORD CHIEF JUSTICE: She positively denied it; and said it must have been her predecessor.

Mr. HAWKINS: She had no recollection of any incident on the occasion of his coming of age, except that there was a ball given, and that a bedroom candle was blown out. She does not remember any conversation with ROGER, nor the subject of any conversation. She has no recollection whether she ever heard him speak French. Her visit to Croydon is described by her thus:—She went on the 16th of January. He was out, and she waited, and she says, "My first impression was one of extreme surprise at his size," and then in her little gushing way said, "Sit down, and let me have a look at you." The eyebrows were like ROGER'S, and the hands were like ROGER'S, the articulation was the same, "but little altered for the loss of teeth." Then she said, "I determined to test him about an incident which happened at the ball. I asked him if he remembered my getting him to go into the room, and locking the door on him, and he said, "I remember the candle being blown out, and that was all." Now, if I remember right, Miss BRAINE first mentioned that when she gave her evidence here. Now, let us see what the incident was. She says that old MOORE, the butler, said that ROGER had taken too much wine, and he had better be got to bed. She sent him a message to come to his room, and when he came she blew his candle out, and then locked the door upon him. She says that that was known to no one; but that cannot be the fact, for old MOORE it was who asked her to get him to bed.

The LORD CHIEF JUSTICE: He was present.

Mr. HAWKINS: He was present; and do you doubt that he would go straight to the servants' hall and tell old BOGLE all about it? However, it is certain that from this meeting at Croydon Miss BRAINE became a very active partisan of the Defendant. She was in constant communication with him. She told us that she had heard before she came into the Witness-box that he had seduced her former pupil. She afterwards lived in the house with him, and associated with him for several months. She lived in the house with his wife after he went to Chili. She came into the Court of Common Pleas. She took the part of an active partisan. She sat day by day in Court. She heard the Defendant upon his oath swear that he had deliberately seduced her own young pupil, and that he had grossly, basely, and wickedly, deserted her—that is what he swore. She knew very well that the object of the proceedings in that Court was to deprive the infant son of another of her pupils of the estates of which he was then the possessor. She heard the Defendant state that he had himself for the purpose of deliberate fraud made that Wagga-Wagga will. She heard him state that side by side with another man he had stood in the dock charged with horse-stealing. She heard he had, because he wished it, changed his name for reasons which he declined to state, lest it should tend to criminate himself, to the name of MORGAN. She heard him state that he had been the associate of highwaymen and thieves. She heard him state that he had told, for the purpose of deceiving and deluding his best friends, a deliberate lie, and that he had charged perjury upon innocent persons. She heard all that, but she shook him by the hand, she associated with him as a gentleman, she is not ashamed of his society, she goes to his bedroom, and sits side by side with him, and she is called by his Counsel a "ministering angel." (Laughter.) Heaven defend me from "ministering angels" if Miss BRAINE is one. "A high-minded, honourable, dignified lady;" where could he find it to use such language as that for such a woman? Gentlemen, if I were to give her a character, I should say she was all that execrable and hateful; and if she wants a character from me, let her take that from me to her next place. (Laughter.) With regard to MUSTON, I will only point out that he was not seen by the other side till 1871. Every one knew that he had been the servant of ROGER TICHBORNE, and the Defendant would be sure to be informed who he was; and what difficulty would there be of talking to him about the dogs—about Spring and Piecrust, and where Spring was born? When I come to the next Witness, however, I have something to say with respect to Mr. WHALLEY and Mr. GUILDFORD ONSLOW. Those gentlemen must have heard the Defendant cross-examined in 1871 as to ROGER TICHBORNE'S smoking at the butler's cottage at Knoyle. You know that in consequence of old Mr. SEYMOUR'S objection to tobacco his sons, ALFRED and ROGER, used to go to that cottage; but the Defendant professed the most complete forgetfulness both as to the butler and his house. Yet they were present when he put questions to HEWITT about old THOMPSON, the butler, his ginger hair, his blind eye, his habit of shooting from the left shoulder, and the smoking at his cottage. Can you conceive it possible that those two gentlemen, as they call themselves—members of Parliament—sat by and heard HEWITT deceived by the pretended recollections of the Defendant? I remember I said, "Did not they smile?" "No, they looked quite serious." And they allowed HEWITT to go into the box and swear to his belief in the Defendant founded upon those recollections.

Mr. Justice LUSH: HEWITT also said that Mr. ONSLOW came downstairs to him, and asked him what he knew about the family.

Mr. HAWKINS: He did, my lord. Gentlemen, I say that a few instances of the sort do throw a great deal of light upon the Case; and I have dealt with this Case for the purpose of exposing what seemed to me a very scandalous proceeding. I turn from that, and passing over Witnesses like COLE, who recognised him by the top of his head, and BAKER, who was Mr. SEYMOUR'S groom——

The LORD CHIEF JUSTICE: That is the Witness who spoke of the colour of the dogs.

Mr. HAWKINS: Yes; but I don't think it worth dwelling on him. Then there is poor Mrs. LEGG, who remembered the stag's-head shirts; and JOHN BROMBY, the Custom House Officer at Poole, who was imposed on by the Defendant's acquired information about the rabbits on the island; and Miss FROUD, the lady who bathed her cats. Was it not a great shame to bring that poor old lady here? Why if they had brought a thousand Miss FROUDS it would not have done any good. To bring her was a perfect waste of time, and an insult to your understanding.

[The Court adjourned at four o'clock.]

ROGER'S MOTIVES FOR CONCEALMENT.

If ROGER, as it would appear, had squandered his available resources, and thereby disgraced himself—if, knowing as he did, that his father had come into possession, and that he had declared he would not return to England during his father's lifetime, ROGER would naturally feel to ask more money. He had spoken of going to India; he had told his cousin, KATE DOUGHTY, he would live for a time among the Indians of North America; he had praised MOLIERE'S "Misanthrope;" he had been impressed by a kindred story told him by the Abbé SALIS—and assuming him to have landed at Melbourne, is it wonderful that he should agree to become a stock-rider (at first for the fun of the thing,) and allowing time to elapse, finally settle into the realisation of MOLIERE'S "Misanthrope"—his ideal character—as near as the circumstances permitted? Between ROGER'S thoughts, as shown in his letters, and the Claimant's conduct, we see cause and effect, for we have the evidence of Mr. GIBBES, and the opinion of the Lord Chief Justice, that the Claimant, at Wagga-Wagga, was a well-behaved man, and ARTHUR ORTON, as everybody knows, could, and did, play the ruffian.

ONE HUNDRED AND SIXTY-FOURTH DAY.—THURSDAY, JANUARY 22ND, 1874.

The Trial at Bar of the Claimant was resumed before Lord Chief Justice COCKBURN, Mr. Justice MELLOR, and Mr. Justice LUSH.

Mr. HAWKINS, Q.C. (continuing his reply), said:—Gentlemen, when I left off last night I had called your attention to the evidence of poor old Miss FROUD. There are a few more of these general Witnesses to whose testimony I wish to call your attention, and then I will proceed as rapidly as I can to attack the army. (A laugh.) I do not think I ought altogether to pass without notice Mr. HOWLESTONE, the grocer of Poole, who did not prove what he was called to prove, viz., that ROGER TICHBORNE was invited to stand for Poole. We know pretty well the kind of connection with Poole which ROGER TICHBORNE had. He was living at Upton, and all that he did was to assist his uncle, Mr. DANBY SEYMOUR, during his election for that borough; but there was no pretence for saying that he had stood, or had ever been invited to stand, as a candidate for Poole. This Witness having failed to prove that which he had been put into the box to prove, they endeavoured to get from him a recognition in the Defendant of the young gentleman he had seen nineteen years ago. In November, 1871, he first saw the Defendant at the 'Waterloo Hotel,' and as to the recognition his own words are "I never saw such an alteration in the whole course of my life," by which I understand him to mean that the Defendant was not like the young gentleman he saw in 1852. In regard to the features, he said there was a bump on ROGER TICHBORNE'S nose which he did not find now, and that he thought ROGER TICHBORNE'S hair was lighter than the Defendant's. As to the voice, he said there was not the accent which ROGER had, and if he had not seen the man before him he should not have recognized the voice. I take that to mean that if he had been taken blindfolded into the room, there would have been no recognition. What is the good of any Witness like that? The next Witness is just as bad, and was also brought from Poole—ANGELINA HOMER. You remember this laundrymaid with the hat. I thought what an odd thing it was that they should have brought such a Witness to recognize ROGER TICHBORNE, seeing that she had only seen him when she was hanging out the clothes. I wonder she was not asked about the purple stags on the shirt. Supposing there were these things, there was one gentleman who was in his service at that time who would perfectly well have known what shirts ROGER TICHBORNE wore when he was at Upton, and that was CARTER. He is now dead, and they regret they cannot call him before you. It is very easy to express regret, but they don't feel it, for it is rather a happy thing for them that CARTER could not be placed in the box. BUDDEN is another witness. He kept the Boilers' Arms at Southampton, and he says he recognized the Defendant by his features and voice. As to the hair, he thought it was a little lighter. He can recollect so little about the period when ROGER TICHBORNE was at Upton that he cannot say whether Sir EDWARD DOUGHTY was living there or not. He described ROGER TICHBORNE as having a short neck, and with such a recollection as that I leave him in your hands. Mr. DYMOTT was the next witness. He recollects ROGER TICHBORNE as being a round-faced young man. You have seen the portraits of ROGER TICHBORNE. I cannot bring myself to believe that they represent a round-faced young man. He was one of the witnesses brought forward for the purpose of supporting what is called their "Sealed Packet" case. He said he saw ROGER TICHBORNE in 1852 walking with KATE DOUGHTY after the partridge shooting had commenced, and he thinks after Sir EDWARD DOUGHTY'S death, which we know could not have been, because Sir EDWARD did not die till the spring of the following year. He also said that ROGER was always called Sir ROGER, which he never was in his life; and, as far as Mr. DYMOTT is concerned, it seems to me I may pass him over without further comment. I am only running through these witnesses to show how useless and absurd their testimony is. Then there is a Miss ELIZA ROPER, who saw ROGER TICHBORNE in 1850. She had as good an opportunity of seeing him as Miss BRAINE had, and no better. She never saw him more than eight or ten days at the time, when he was staying at Tichborne House, whilst she was an under servant in the family, and yet, twenty-three years later, she is called to prove the identity of the Defendant with ROGER TICHBORNE. There is another Witness, CHARLOTTE GRANT, who had been a kitchen maid and third housemaid at Tichborne. She was one of those who had never seen the Defendant from the time ROGER TICHBORNE left England until the morning she was examined. She said that she asked him a question about the likeness of a young lady being prepared for him to take abroad—meaning Miss DOUGHTY; and that the Defendant, who, no doubt, jumped at what he thought must be a fact, immediately replied, "Oh, yes, I recollect that perfectly well, but I never had it." Now, Miss DOUGHTY has been called, and she says that there is no pretence for saying that any portrait of herself was taken for ROGER TICHBORNE to take abroad. This Witness, in substance, establishes this—that she had got hold of some wrong story, some bit of gossip which had no foundation in fact; and she goes and asks the Defendant a question as though that were true. He adopts it in a moment, and says, "I recollect that perfectly well; it was Miss DOUGHTY." What good is evidence like that? They had better have left her at Upton. This is the lady who told us that on six different occasions, when she was taking in the luncheon into the school-room she saw ROGER TICHBORNE having his letters corrected by Miss BRAINE, who each time said some such thing as this, "That's wrong, ROGER." I don't believe Miss BRAINE dare have said, "That's wrong, ROGER," because you know he never was her pupil. It was very much like old BOGLE seeing him six times scratch the same arm in the same spot. (A laugh.) Well, gentlemen, I did propose yesterday to talk to you about PARKER, the horse dealer, but, upon reflection, I do not think it worth while to waste time upon a Witness of that kind. In one sentence almost I may tell you what I think about him. It is not as though there had been a meeting between the Defendant and PARKER the very moment that he went down to Alresford, before he had seen anybody or had an opportunity of acquiring information. But just see when it is. It is in the month of September, when nearly eight months had elapsed since the Defendant had been first down to Alresford. During the whole of that spring and summer you know perfectly well what he was doing. You know that ROUS, after he left Mr. HOPKINS, had been living at the 'Swan,' and no one was better able to make inquiries on these subjects than Mr. ROUS. Moreover, there was Mr. BAILEY, Mr. ONSLOW, and a thousand people, all there collecting information. Now when PARKER saw the Defendant he was actually at that moment coming in from shooting in the company of old Mr. STUBBS, who was one of his staunch supporters, and whom they would not put into the box. There is a very obvious reason for not calling Mr. STUBBS; more, perhaps, than at first sight appears. If he could honestly recognise the Defendant as ROGER TICHBORNE, why was he not put into the box? Can you suggest to yourselves a reason, why he was not? I can suggest two. In the first place, if Mr. STUBBS had been placed in the Witness-box, I should have cross-examined him. The first question I should have asked him would have been in regard to what he had been saying to those who were in the Defendant's interest, or about that picture of Mrs. STUBBS'S old relative. The second question I should have put to him would have been this: "Why, STUBBS, you had been out shooting with the Defendant, had you not, on the day when PARKER came into the Swan yard at Alresford?—Yes. Did you see PARKER there? Did you know anything about that horse ROGER TICHBORNE bought of PARKER?" He must have said something. What he would have said I know not, though I can guess what would have been his reply. Mrs. STUBBS was called, and she appears to be a respectable woman. I have no doubt Mr. STUBBS is a respectable man, and I have no doubt he would not go into the Witness-box to tell what he did not believe to be true. That being so, I can thoroughly understand why he is not put into the Witness-box. There is another Witness, Mrs. BYLES, whose name was originally TITHERIDGE. She had got the office of a tax collector in the neighbourhood. She said she recognised the Defendant as ROGER TICHBORNE at Southampton, in 1872. This Witness never uttered a word to ROGER TICHBORNE in the whole course of her life; and the last time she saw him was in 1849, when he was about 20 years of age, and Miss DOUGHTY was 15. As I understood her, that which she stated about ROGER TICHBORNE rather goes to support my case, and to disprove that of the Defendant, because she said she thought the Defendant's hair was not so dark, which is perfectly true. She was another of those Witnesses who were called to prove the amusements of ROGER TICHBORNE, and she told us some story about seeing him trying to induce Miss DOUGHTY to jump over a stick. Assuming the story to be true, it is absurd and monstrous, and I think wicked, to suggest that two young cousins could not go out together and amuse themselves about the park without it leading up to gross criminality. There is another very absurd Witness. What do you think of their calling such a man as EELES, who took the oatmeal to the dogs at Tichborne? It was seven or eight and twenty years ago since he saw ROGER TICHBORNE. He did not even know that ROGER TICHBORNE went into the army, and he does not see the Defendant until 1872. Then he gives you this sort of notion about ROGER TICHBORNE, that when he saw him last he thought his height was 5ft. 5in., or 5ft. 6in., or 5ft. 7in. There (pointing to the Defendant) is 5ft. 9½in. according to his own oath,* and there is an end to EELES. MARY ANN NEALE is one of those Witnesses whom I must consider as wilfully false, but her evidence has tended to throw a great deal of light both upon the Case itself, and upon the manner in which it has been got up. Her statement is that she was barmaid and chambermaid at the inn at Melksham, near Bath. She remembers

* See footnote, *ante* page 399.

ROGER TICHBORNE washing his hands there, and she said that there were no marks upon his arms, but she saw the defective thumb. It is curious that she rather corroborated Captain BROWN, for she put this defective thumb on the right hand. True she did not know which hand it was, and it was only by good fortune that I got it from her on cross-examination. It is curious that, like nearly all the rest of the Witnesses, she recollects ROGER TICHBORNE by his features. It is either the nose, or the brow, or the eyebrows. One of them said it was a lump of fat on the end of his chin that recalled him; but all recognise the Defendant as ROGER TICHBORNE by some feature.

The LORD CHIEF JUSTICE: Not all of them. I was struck by the large number who identified him by his likeness to members of the TICHBORNE family.

Mr. HAWKINS: A good many did, but they all condescended to some feature. If you meet an old friend you either know him again or you don't; but you don't say, "I recognise him because he is something like his old father;" and you don't recognise him because of something in his hair or his brow. Just look how this woman goes on. She recollects the dimple in his chin, and his medium brow! Of course she remembers his feet, but she thinks the Defendant's voice is a little more hoarse. In this Witness's case the dates are important. We have no evidence of ROGER TICHBORNE being at Bath except on that short occasion in 1848 or 1849 spoken to by Mr. BIDDULPH. Well, we called Mr. SPURLING, and he contradicted her statement as to the accident to the dog-cart as to which she spoke. But what are you to think of her when Mrs. OATLEY said she succeeded her as barmaid in 1847, and fixed the date by the production of a baptismal certificate? You therefore have it conclusively proved that she has spoken falsely. Her evidence is perfectly useless for the purpose of the Defence, but she is a most valuable Witness on the part of the Crown, for she shows that the Defendant adopted a false story, and allowed her to go into the box and perjure herself. It is of a piece with the evidence of LUIE and Captain BROWN, on which I shall have occasion hereafter to make some comment. I suggested at the time that her story about the dog-cart was one that had been communicated to the Defendant, and I am sure of it now; for, as the accident never happened at all, there must have been some communication between them. But what a parade there was about this woman! There was HARCOURT, young HARCOURT, Mr. WHITE, two innocent lads from Mr. HARCOURT'S office——

A JUROR: There were four.

Mr. HAWKINS: Yes, four, called to show that there had been no communication with the Defendant. Says the Defendant's Counsel, "It is scandalous to suggest that my Client would attempt to deceive the Court. He would not do anything of the kind"—and then the learned Counsel called the Witnesses I have named; and, in addition to them, he also called Mr. GUILDFORD ONSLOW'S clerk, MACHIN. Now, I don't want to be hard upon MACHIN, who, of course, had his living to get; and my desire is to feel as kindly and charitable as I can. I quite believe him when he says that he is Mr. ONSLOW'S clerk, and that is about as much as I do believe. (A laugh.) It singularly happens that he had been clerk of MOOJEN, who was once the Defendant's Attorney. When Mr. HENDRICKS took up the Defence, MACHIN went with it to his office; and it was there that Mr. ONSLOW found him. Just fancy a gentleman in Mr. ONSLOW'S position keeping a clerk like MACHIN! I wonder whether he made copies of the evidence at Poet's-corner before his master went to see LEWIS. But why did not Mr. ONSLOW come into the box like a man! The learned Counsel produced all the people who could have communicated NEALE'S evidence to the Defendant, did he? Well, he only omitted to call ONSLOW, BAIGENT, HARDING, and young BOGLE! It was an insult to think, Gentlemen, that you would shut your eyes and say you should believe what was suggested to you. I come now to a Witness who I say is just as bad as NEALE—worse it would be impossible to find—I mean LEWIS, the draper's apprentice, who swore that he had been introduced by Miss DOUGHTY to ROGER TICHBORNE as her cousin from Paris. He attributed to ROGER TICHBORNE participation in scenes of low debauchery which nobody had ever dreamed of suggesting until this man got into the box. He told us that it was ROGER TICHBORNE'S turn to stand treat, and he remembers, though it was more than twenty years ago, that the bill for drink and tobacco came to three shillings and twopence-halfpenny. (A laugh.) He says that on that occasion they "got tight," and that in defending himself against imaginary robbers he prodded ROGER TICHBORNE in the arm. Then he says he left him on Tichborne Downs and went to fetch some diachylon plaster. When he came back he proceeded "under the broad canopy of heaven"—(laughter)—with the moon shining upon them—and I say it was all moonshine—(laughter)—to stick the plaster on the wound, under the lee of old CHICK'S beershop.

The LORD CHIEF JUSTICE: *This wound was just where the tattoo was alleged to be!!!*

Mr. HAWKINS: Exactly—the very spot. That is a curious story, a very curious story. There is not one of you, I am sure, that does not believe it to be a wicked fabrication, but it is amusing. Imagine, if you can do such a thing, that this wound really was made in the way described; do you think ROGER TICHBORNE would ever have forgotten it? But this ROGER TICHBORNE (pointing to the Defendant) when questioned about the scar, said, "Why, I hardly knew I got such a mark till I was asked about it! and it would be a monstrous absurdity to ask me how I came to have it if I did not remember I had it." But if ARTHUR ORTON had a little "A. O." on that spot, and if that was cauterised, it would not be so surprising if he had forgotten it, following therein the old maxim, "Least said soonest mended." (A laugh.)

A JUROR: He said the stick went through the coat.

Mr. HAWKINS: Yes, right through the coat. I wonder they did not call somebody to say he was a tailor, and that he recollected mending it. (A laugh.) Then the Witness swore that he saw old JOHN ETHERIDGE chasing ROGER TICHBORNE 400 yards along the road with his flail. We have had ETHERIDGE in the box, but he told us nothing of the kind. That is another of the stories to which LEWIS was allowed to swear. I place LEWIS in the same category with Mrs. NEALE, and there I leave them together. You know that great complaint was made against us that we cross-examined Mrs. NEALE as to the position of the washing-stand, and as to the dress of ROGER TICHBORNE. The position of the washing-stand was everything; because upon that depended the question whether she could have seen his left arm, which was tattooed.

The LORD CHIEF JUSTICE: My impression is that she did not say she saw him washing, but that he stood with his sleeves rolled up waiting for her to bring his hot water.

Mr. Justice LUSH: That was so.

Mr. HAWKINS: Well, her testimony has been disposed of in other ways.

The LORD CHIEF JUSTICE: *But her evidence is open to this strong observation. This woman, as a chambermaid, must many times in the course of the year have had to take water to gentlemen who desired to wash their hands; yet she professes to remember this one occasion.*

Mr. Justice LUSH: *And on that very occasion she says she had also to take water to* Mr. SPURLING'S *room.*

Mr. HAWKINS: I now come to the evidence of Mr. GREENWOOD, the army tailor. In 1867 that gentleman, having left his business at Canterbury in the hands of his son, had gone to reside somewhere in the north. Applications were made to him and his son for the measurement of ROGER TICHBORNE'S clothes; and on the 25th of July an appointment was made for him to see the Defendant at Croydon. The Defendant had had measures, and had possibly seen Mr. GREENWOOD'S ledger—for young Mr. GREENWOOD was not called. He even had by him some old clothes of ROGER TICHBORNE. At this time CARTER, who had been in ROGER TICHBORNE'S service in 1852, was in the Defendant's service; and CARTER would, of course, be able to remember as much about his old master's clothes as his master himself would have done. Well, Mr. GREENWOOD went to Croydon, and was admitted by CARTER. After he had waited about a quarter-of-an-hour, the Defendant came home in a cab, and was, of course, let into the house by CARTER. He came into the room, and said, "GREENWOOD, how are you?" GREENWOOD says he did not recognise him, but after a time he noticed an expression of the eyes, the walk, and the voice, which recalled to him ROGER TICHBORNE. A conversation ensued about the coats; but what does it amount to? GREENWOOD was known to be coming, and ROGER TICHBORNE'S servant was living in the house. Then the Witness says they began to talk about old regimental matters. The Defendant referred to the old waterman, and the tricks Captain PINCKNEY used to play on him. Why, CARTER had been Captain PINCKNEY'S servant! Then Mr. GREENWOOD showed the Defendant a photograph containing likenesses of Quartermaster FRASER, Mr. BETTY, and Mr. DUBOBLE. The Defendant immediately recognised Mr. FRASER, but said he did not recollect the others. That incident made a great impression upon the mind of Mr. GREENWOOD; but let us see what the explanation of it is. Two or three months before he called on Mrs. PHILLIPS, the wife of one of the Carabineer officers, and she happened to have in her album a copy of the very photograph which Mr. GREENWOOD showed him. At Mrs. PHILLIPS' he did not recognise any of the likenesses, and it was Mrs. PHILLIPS who told him that the centre figure was Quartermaster FRASER, the only one she happened to know. If Mr. GREENWOOD had known all that, would he not have said, "This is a trick—this pretence of recognising FRASER, who are the others; which is BETTY?" ROGER TICHBORNE knew BETTY, but the Defendant did not. It strikes me that this evidence of Mr. GREENWOOD, coupled with that of Mrs. PHILLIPS, is really a very strong piece of evidence in favour of the Crown. I do not stop to dwell on the character of his recognition of the Defendant. I will only say that he describes ROGER TICHBORNE'S voice as "a soft, mild" one, and that that he thinks the Defendant's is the same. As to Captain SANKEY, I don't think that any of us would have recognised the Defendant under such circumstances as the Witness has done. The Defendant had made the acquaintance of a Mr. COOKE in Australia, who went over to see his friends in Ireland, and whilst there he was in the midst of the KELLETTS, the NORTONS, and all ROGER TICHBORNE'S old friends. In that way, when Mr. COOKE returned to England, he would be able to communicate, innocently enough, a great many valuable little facts to the Defendant. At all events, he gave the Defendant the means of captivating Captain SANKEY, who seems to have been a rather credulous person. ROGER TICHBORNE had known DICK KELLETT, and KELLETT had been invited, as well as Captain SANKEY, to see him. KELLETT said he would come, but SANKEY took no

notice of the letter. When, therefore, SANKEY, who was not expected, called on the Defendant at the Waterloo Hotel, he was mistaken for KELLETT, who was. "How are you, KELLETT?" says the Defendant. "I am not KELLETT." "Then you are SANKEY," and that seems to have convinced the captain. But how could ROGER TICHBORNE have mistaken the one for the other? for Captain SANKEY says he is not a bit like KELLETT. However, that is the story of Captain SANKEY'S recognition. And now, gentlemen, I am happy to say that I have reached the last of this group of Witnesses; but there are some that were produced at the last Trial, whom we have not seen. There is, for instance, Colonel LUSHINGTON, whom Dr. KENEALY promised to call if he was in England; and who would have been a very useful Witness for the Defendant if the case for him had been an honest one. He had been a staunch supporter of the Defendant, and had actually received him into his house. He could have told us how the Defendant occupied himself during the months or weeks that he was staying at Alresford, the nature of the conversation that he had with him, the amount of curiosity which he showed about the park, the roads in the neighbourhood, and the like. I don't care about the information he afterwards picked up; what really is important is to know how much he had when he went down into the neighbourhood.

Mr. TAYLOR (Juror): Was not Colonel LUSHINGTON at the meeting at Alresford with Mr. SCOTT?

Mr. HAWKINS: He was; but he was one of those who were undeceived. Then where is LIPSCOMBE, the family doctor? No one could have given more important evidence. He was one of those who spoke as to the tattoo marks. I have already read the Defendant's letter in which he sends a message of thanks to "Dr. LISSOM" about some "kind offer" which he had made him. Why was not Dr. LIPSCOMBE called? Were they afraid that I should repeat the question which was put to him on the last occasion? Supposing that he could have said he had seen ROGER TICHBORNE'S arm, and that there were no marks upon it in the place described by other Witnesses, how they would have rejoiced over his testimony! And if for any reason he was prevented from coming here, would they not have appealed to the Court for adjournment after adjournment till he could have made his appearance? But supposing that he was likely to answer the question the other way, I can well understand that he would be looked upon as a very dangerous Witness; and we know as a matter of fact that he is not here. We know also that the other side have had access to his books for a highly discreditable purpose, that of founding questions upon them. Again, I ask, why didn't they call Dr. LIPSCOMBE? Then there is Mr. GUILDFORD ONSLOW. (Laughter.) Where is he? It is all very well to say that Mr. ONSLOW did not know ROGER TICHBORNE, for he knew him quite as much as many of the Witnesses who have been called—at least we have been told by Miss NANGLE that he once saw him on the pier at Boulogne. He knew quite as much as poor ANGELINA. (Laughter.) Are they afraid, or is he afraid? Was it thought that I should ask if he went prying into Mr. LIPSCOMBE'S books to see what sort of prescriptions were made up for the TICHBORNE family? Did he not dare to come and submit himself to cross-examination? If he had come, I would have asked him, on his oath, if he did not give information on which that infamous question which was put to Lady RADCLIFFE was founded? He could have told you whether or not, night after night, and day after day, he had been in communication with the Defendant, and furnished him with the information that lay in his power. If he had been put into the box he might have been compelled to tell us the nature of his communications with the Defendant, and whether a great deal of the information which Defendant possessed was not furnished by him. I should have been able to ask him about his keeping the clerk who came over from Poet's-corner, and why he selected as that clerk the particular person who had been in the service of MOOJEN and HENDRICKS, former attorneys of the Defendant. Why was he not called? You can judge for yourselves. I pass on from him now. I shall not leave him though. (Laughter.) He will have the pleasure, if he should be here, of hearing his name often pronounced within these walls. I will tell you hereafter what he has done, and why he has done it. I should have liked to have asked Mr. HASTED something, and probably that is the reason why he did not come. I should have reminded him about being on the platform when BOGLE went down to Alresford. Were they all in such a state of curiosity about the existence of BOGLE that it was necessary for this Defendant, who was so wretchedly poor that he could not afford to go and see his mother, to send him down to Alresford that he might be met by some hundreds of persons in order that his existence might be proved? Possibly it was thought that BOGLE was a person who could give a good deal of colour to the Case. (Laughter.) Then there is BAIGENT. (A laugh.) Now FRANCIS JOSEPH would have been a Witness of the greatest importance. They say he would not; and that is their excuse for not calling him. Well, I daresay they were quite right in thinking that his evidence would not have left their Case any better than it was. BAIGENT was the person who had written, not long before, a history of the TICHBORNE family, and he happened to be in Alresford on the very day that old BOGLE arrived, and had instructions to go to Tichborne House to see the pictures. It does not seem that BAIGENT had seen them very recently; and I suggest that BOGLE was telegraphed for to see the pictures. BAIGENT had recognised BOGLE instantly upon his seeing him. BAIGENT had travelled with the Defendant, I was going to say, over the greater part of England. I am sure I have insinuated enough against BAIGENT to challenge them to call him if they had dared. We know that BAIGENT has been constantly at Poet's Corner, and probably he has not lost all his sympathy for LUIE. Then there is Sir TALBOT CONSTABLE. We know from the Defendant's Counsel that he was examined at the last Trial; and I should remind you that he was godfather to the Defendant's child. It was said that he was not called at this Trial because they did not choose to submit him to the sort of cross-examination it was suggested would be administered to him about his family. I declare to you that there is no intention farther from my thoughts at any time than unnecessarily to question a man about things which have nothing to do with the matter at issue, or which do not affect the credibility or honesty of the Witness—

The LORD CHIEF JUSTICE: We really do not know that there is anything affecting Sir TALBOT CONSTABLE.

Mr. HAWKINS: No, my lord; and I was going to say that if Sir TALBOT CONSTABLE has been made unhappy or uncomfortable at all it is the Defendant's Counsel who is to blame; for I have not one single circumstance in my knowledge which would occasion a blush upon the face of Sir TALBOT CONSTABLE or anybody connected with him. I have no more idea of the sort of statement which was going to be made with reference to Sir TALBOT CONSTABLE than I have of insulting any other respectable person who gets into the Witness-box. It is an invented false excuse.

The LORD CHIEF JUSTICE: As I understood, it was an excuse founded upon some loose or familiar expression with reference to the lady whom Sir TALBOT had married, used in the way in which a nephew would write to his aunt, and not implying anything disrespectful.

Mr. HAWKINS: Not in the least. I think it is one of the wicked things that have been done in this case—to insinuate that there is some domestic unhappiness which will make a man uneasy in the Witness-box for the mere purpose of getting out of a difficulty, reckless altogether of the happiness of the gentleman and lady whose names have been brought forward. Even if there had been anything—which there was not—I should have wanted no check to restrain me from putting such questions; and if I had been wanton and wicked enough to put them I should have been immediately met both by the Court and by yourselves in such a way that I should have been ashamed of myself. As I have said, this was put forward as an excuse. I will tell you the real reason why they dared not call Sir TALBOT CONSTABLE. * At the last Trial he gave his evidence before the Defendant was placed in the Witness-box. I don't want to say one single thing about the conduct of the case, but I cannot help thinking that it was designedly arranged that the Defendant should not go into the Witness-box first, so that his cross-examination should not be heard by ROGER TICHBORNE'S friends who were to speak to his identity. Supposing that Sir TALBOT were in the box, and were asked, "When you were examined upon the last occasion were you aware that the Defendant had told Sir JOSEPH RADCLIFFE that he, as ROGER TICHBORNE, had given you a black horse, which he bought of LAMBERT?" He would have said, "I was not. Is is not the fact. The horse was given to me by Sir JOSEPH RADCLIFFE, and was not bought of LAMBERT." "Can you account for his making a statement of that sort?" He would be obliged to say, "No; it is a very unaccountable thing?" And suppose he were asked, "Were you aware who accompanied him down to Clifford Constable? Have you ascertained what inquiries he made; were you aware that he was in such absolute ignorance of ROGER'S Paris life that he did not remember his father's home; that he was in such absolute ignorance of ROGER'S school days; or that he had shown the most lamentable ignorance of ROGER TICHBORNE'S military life? Did you consider these things when you gave your evidence at the last Trial?" These are home questions. Sir TALBOT CONSTABLE is a gentleman. Sir TALBOT CONSTABLE would no more think of going into the Witness-box and telling an untruth, than he would think of committing any other disgraceful act. The Defendant wrote a letter to Sir TALBOT CONSTABLE, in which he referred to the meeting with KATTY and LUCY TOWNLEY as not so favourable as he had expected. Then there is a letter to Lady TICHBORNE, in which he said that a baby son had been born to him, and he had been "regered" but not christened; that TUCKER was not "respectiable" enough to be godfather. Nothing would do but a Baronet, or "a Baronet he hoped to be some day." (Laughter.) Then in May, 1867, he writes to Lady TICHBORNE, in which he said he received a letter from TALBOT CONSTABLE yesterday; and goes on:

"I hope he does not come till I am well, it makes me so ill to be talking so much. I am not very well, so am keeping my bed. Will you, my dear mamma, answer Sir TALBOT'S letter for me? I don't lick the way he writes. I think he been tampered with by the other partis. We must be careful now my case is so

* That Sir TALBOT CONSTABLE was thoroughly convinced, in 1873, that the Claimant was Sir R. TICHBORNE, is proved by his letter to the Claimant which appears in Vol. VI., page 142. Also see the account of his interview with Dr. KENEALY in the same Volume, pages 140-142.

strong. If he were to come up to be godfather to my son and then say he don't know me, it would injure my Case very much." (Laughter.)

There is another letter of May 31st, 1867, which shows he cannot get over the fright, for in it he says:

"It would be wrong to make TALBOT godfather. Suppose when he came he did not remember me." (Laughter.)

I do not think I need trouble you more with respect to Sir TALBOT CONSTABLE, and I now call attention to the way in which people have been worked upon. A letter was addressed by Mr. BINGLEY to HOLMES on the 19th of October, 1868, stating that he had a nephew living near Southampton, where there seemed to be erroneous ideas prevalent as to Sir ROGER TICHBORNE, and suggesting that he should be furnished with the thirty-nine affidavits and the additional CASTRO correspondence, with the view of disabusing the minds of those who had formed wrong opinions. HOLMES sent them, and Mr. BINGLEY acknowledges them, saying that he had forwarded them to his nephew, the Rev. F. DAVIDSON, by whom they were to be lent about, and amongst others to persons in Tichborne itself, who had formed adverse opinions to the Claimant, as he was then called.* I quote this as a specimen of the manner in which people have been influenced; and I must say that such conduct seems to me to be neither reputable, nor, as the Defendant would say, "respectiable." (Laughter.)

[The Court then took its mid-day recess.]

After it had re-assembled,

Mr. HAWKINS, resuming his address, said: Gentlemen, I have now arrived at the Carabineers; and just as in the case of the non-military Witnesses I showed you how, bit by bit, knowledge was obtained by the Defendant, so now I propose to do that with regard to the Carabineers. To go over the evidence of each individual would be an idle waste of time. You must have observed that the knowledge which the Defendant had of military affairs before he had the advantage of CARTER'S instruction, was next to nothing. The statement he made to GIBBES that he enlisted as a private soldier, and was bought off after thirteen days, and his other statement at Sydney that the commanding officer of his regiment was Colonel WILSON, and that they were called "Blues," showed utter ignorance. BOGLE, in his evidence said all he knew was that ROGER had been in the army, and that he did not know where he had been quartered. I do not know, therefore, where he could have got the information. When he met GOSFORD he exhibited the same complete ignorance, and in answer to the question where he was quartered in Ireland he said, "the Curragh of Kildare." That was in January, and between that interview and the one in March with some members of the family at Croydon, he still had no opportunities of learning anything; and so he gave to the same question the same answer, "the Curragh of Kildare." After that, CARTER, who had been servant to Captains PINCKNEY and MORTON, makes his appearance at Croydon, under circumstances which are not in evidence. This was in March, 1867. Soon after, M'CANN, who was at Maidstone, was communicated with, and went to Croydon. CARTER was at once taken into the Defendant's service, but it was not till June that M'CANN was taken into the house, just as BOGLE was, not for the purpose of doing any work, but as an act of kindness, he being rather an encumbrance than otherwise. In the same month in which CARTER came into the service Mr. HOLMES procured the statistical information as to the number of officers, the places at which the regiment was quartered, and the time of their being stationed there. Hardly anything is so captivating among old friends who have met, as the relation of little incidents connected with the past. I had an instance of this the other day myself. I saw a gentlemen whom I had not met for many years, and whom I had known on the Home Circuit; and we recalled the past time, and we referred to our walks and our talks, and the little things that we remembered to have occurred. ROGER TICHBORNE was a gentleman, moving in the society of gentlemen, dining with them at mess, and meeting them at parties; and as regards what passed among such persons the Defendant was entirely ignorant. With things known to nearly every man in the regiment, at all events to the officers' servants, he was acquainted. With reference to things known only to ROGER TICHBORNE and one or two other persons, you almost always find him at fault. Take the instance of the Sealed Packet, to which I shall have to refer hereafter, and that of the snuff-box given by ROGER to his comrade FRASER. It is remarkable that the interviews were so arranged that in the case of these Carabineers each had seen somebody else before they proceeded to identification. Not even an officer was met without one of the Carabineers having seen him previously to ascertain how he could operate upon him. Although the Defendant in the Court of Common Pleas showed the most glaring ignorance as to many military matters, yet, being ignorant of these things, he remembered some things of extraordinary minuteness, such as the number of a trooper's horse, or a jackdaw hopping about a yard. Some men have extraordinary memories; but it is remarkable that the Defendant should remember things of this sort, and not remember things which had special reference to ROGER TICHBORNE. You cannot have stronger proof of deliberate fraud than the adoption by a man of things that never occurred, or remembering them in a way that is glaringly erroneous. I will point out some instances of this sort. I told you that in March CARTER was taken into the service of the Defendant. Can you have any doubt as to what that was for, when you know that he was speedily despatched to Sandhurst? Here you have a man so ignorant that he has not even a chance of success in his claim until he acquires knowledge. How was such a knowledge to be supplied? What was CARTER'S mission to Sandhurst? You must remember what he did. He was there 48 hours drinking and chatting with Carabineers. He saw there two men —WILD and WADDINGTON. WILD you have had before you; WADDINGTON is dead. What did he do with these men? CARTER took them back with him to town to HOLMES'S office in the Poultry, where, after waiting a considerable time, WADDINGTON saw the Defendant, and remained with him an hour. I cannot tell you what passed at the interview; but why should the Defendant be closeted with this man, a stranger to him, for a whole hour? Have you a doubt that WADDINGTON had been led by CARTER to converse of what he recollected? and have you a doubt, when you find ROGER'S old servant taken into the Defendant's service and sent down by his new master to Sandhurst to mingle with the Carabineers, that he told them how his master was altered, and so prepared them for an interview? If WADDINGTON had stated that CARTER told him nothing about his new master, that would have been as incredible as that Sir EDWARD DOUGHTY'S old servant BOGLE should have been so long with the Defendant and not talked about the shipwreck. Next WILD was introduced, and he recollected many things. The moment the Defendant is able to start a conversation, the progress is very clear. He would say, "Ah, WILD, it's many years since we saw the old raven hopping about in the barrack-yard." "Yes it is," says WILD; "I shouldn't have thought you would have remembered that. Do you recollect the night the donkey was put into your bed?" "Aye, don't I!" replies the Defendant, and he stores up the donkey story for somebody else. And so they go on interchanging little anecdotes. Those which the Defendant had previously learned are played out upon his present visitor; and those he then learns are played out upon others. And so the Defendant goes on, rolling these things up like a great snowball; but it only wants a little sun upon it to melt the whole concern. (Laughter.) WILD says that one night ROGER TICHBORNE fired his revolver at Major FORSTER for putting low women into his bed, and drew his sword to use it on a girl who was in his room. These things are totally denied by Major FORSTER. He says the story of the sword is founded upon an incident which occurred to another officer—that ROGER threatened to use a knife to a woman who had been put into the cupboard. They had got hold of the wrong story. There is nothing particularly objectionable in the testimony of Sergeant-Major CAIRNS, and I dare say that like WILD in the first instance he thought the Defendant was his old officer, because he seemed to recollect that at Canterbury CAIRNS injured his arm. If CAIRNS had reflected I think he would have seen that the Defendant might have heard of that circumstance.

Mr. Justice LUSH: CAIRNS *said it was known throughout the regiment.*

Mr. HAWKINS: It could not be otherwise. Mrs. CAIRNS was tickled with another thing. The Defendant told her of the child who was smothered; but that must have been told to him, because the child was smothered on the day CAIRNS came out of the hospital, at which time ROGER TICHBORNE was at Upton. Having been in this way recognized by CAIRNS and his wife, an adjournment is made to Alresford; and see the use made of CAIRNS there. Major HEYWOOD happened to be staying at Alresford. If this was to be a recognition by an old officer, why could not the Defendant have called at the house at which Major HEYWOOD was staying, instead of sending CAIRNS? I should have thought it hardly necessary to mention Major NORBURY after the admissions he made, except to show the way in which he was enlisted. CAIRNS went to fetch Major NORBURY to see the Defendant, and on the following day he writes to Mr. ROUS telling him that the interview between Major NORBURY and ROGER had been satisfactory. "Major NORBURY," he said "is a strange man, but the conversation we had in the trap had great effect. We leave to-morrow for the purpose of having an interview with Captain SHERSTON, who I know will be right, after I have had a few words with him." That is the way in which Major NORBURY is introduced to the Defendant. I don't propose to deal at any length with Major NORBURY'S testimony, because I do not think I am mistaken in the impression it made upon your minds; but in the result it comes to this—he could not recognise him when he saw him first, but he had a conversation with him about different officers, and other things, and at last he thought he recognised his old comrade. He did not take it into his consideration what had taken place since March, that he had told Mr. GIBBES at Wagga-Wagga

* Messrs. DOBINSON and GEARE, and Mr. F. BOWKER, Solicitors for the TICHBORNE Family, wrote numbers of letters, containing false statements, both to Witnesses abroad and in England, denouncing the Claimant as a rank impostor and prejudicing his case in every conceivable way. TICHBORNE'S lawyers, on the other hand, merely circulated copies of sworn affidavits, made by respectable and truthful Witnesses. How different was the conduct of the other side, who scattered, far and wide, scandalous and one-sided statements!

that he had enlisted, and had no military knowledge. As it was in the case of Sir TALBOT CONSTABLE, so it was in that of Major NORBURY. I think all the officers who were examined were examined before the Defendant submitted himself to cross-examination. I don't think I am wrong in saying that if Major NORBURY had been asked to form an opinion from what took place in the month of July alone, and had not been told the means by which the Defendant could have recognised him, he would have formed the opinion that he was ROGER TICHBORNE.

The LORD CHIEF JUSTICE: I much doubt whether a Witness ought to be allowed to give an opinion as to identity from what passed between the person and himself. That is entirely for the Jury. What you have a right to ask the Witness is that which cannot be brought before the Jury, viz., the appearance of the man, and all that relates to his physical development. All that relates to judgment formed on conversation is rather for the consideration of the Jury. It is very difficult to exclude it, but the Jury must not allow themselves to be led by opinions based upon conversation on one side or the other.

Mr. HAWKINS: Gentlemen, having given you the impression formed in my mind, I don't propose to occupy your time any further by discussing the testimony of Major NORBURY. It is a singular thing that they don't call STEPTOE, who had not an opportunity of talking to the Defendant, though he saw the man, and, as far as the eye went, could form as good a judgment as his master. Major NORBURY did not recognize him at first, and the obvious inference is that his opinion was formed from a view of the man, coupled with the conversation which took place between them. Captain CUNLIFFE saw a great deal of ROGER TICHBORNE, and he never spoke to the Defendant till the 1st of October, 1873, the very day he was examined. Now what means were there for a man to form an impression upon such a meeting as that? Captain CUNLIFFE said the Defendant was not ROGER TICHBORNE in statue, but altogether he thought he was like his old brother officer. He would not pledge his oath as to the man. He said ROGER TICHBORNE spoke broken English in a soft, liquid voice, but he could find no trace of that in the Defendant. He says ROGER had a peculiarly long narrow head and very straight hair, long narrow feet, and fair-sized hands. Now, I confess I don't see anything of the peculiarly long and narrow head about the Defendant. I am now coming to a point where there is as wide a difference between the Defendant and ROGER TICHBORNE as could be. Captain CUNLIFFE says ROGER TICHBORNE was a truthful, honourable man. You have heard the Defendant's account of himself, and you have heard his Counsel's account of him. I don't care whether you take the Defendant's description of himself upon oath, or whether you take his Counsel's opinion of him not upon oath; but I ask you whether either agrees with his being a truthful, honourable man. If ROGER TICHBORNE was on intimate terms with Captain CUNLIFFE, how on earth could it have happened that the Defendant was in England seven long years without inquiring after him. He had hunted up Major NORBURY, who was not a particular friend of ROGER TICHBORNE'S. He hunted up Mr. SHERSTON and Captain HEYWOOD, none of whom were intimate with ROGER TICHBORNE. He had sent CAIRNS to rake up all the officers, but his own particular friend he does not seek.

A JUROR: He said the Chili photograph was a good likeness of ROGER TICHBORNE.

Mr. HAWKINS: Yes, the Santiago one. Well, you have got the Defendant to compare with that, and I won't deal at any more length with Captain CUNLIFFE. I have now to deal very shortly with the Carabineers. I shall speak as to their general recollections. When they see the daguerreotype, just see what they say. Yet they all profess to have a good recollection of ROGER TICHBORNE. The daguerreotype is admitted to be a good likeness.* Now, WILD said it was not a bit like him. Of what value is his recollection? TRY and BARRY say the same; so does LESSWEARE, who professes to recollect every feature of ROGER TICHBORNE. MUNDAY says the eyebrows and carriage of the head are something like, but nothing else. BEHAN says, of the oval one, that there is not a feature which resembles ROGER TICHBORNE. BRITTLEBANK cannot remember him in the oval one, but says that in the square one there is a fair resemblance. MATHER says it is not like in face or form. Now they all knew that when they were in the Carabineers there was a young officer who was very like a Frenchman in the regiment. They knew that some jokes were played upon him. They remember he had a weakness in his knees, and a habit of raising his eyebrows. They are told before they see the Defendant, "This man is come back; he is very much altered, and he is increased in bulk, but you will find the same awkward gait, and the same twitch in the eyes." When they go into the Defendant's presence, they find what they were told they would find, and they are captivated by the little stories he tells them about the regiment, and in consequence they say, "This must be the man." Why is it they don't recognise the photographs? Is it because they are not like ROGER TICHBORNE or not like the Defendant? Most likely the latter.

Mr. TURNER (Juror): A man like MATHER is above suspicion.

Mr. HAWKINS: I do not in the least degree impute to the main body of these Carabineers anything like perjury. They have been themselves very much imposed upon, and I fear many of them have been operated upon in the way I have been obliged over and over again to suggest to you. Let me take two of them. I don't know when Serjeant-Major MARKS was first enlisted to the Defendant's side, but it must have been before August, 1867. Mr. M'ELENEY, the bandmaster, was requested by Serjeant-Major MARKS to come from Aldershot to interview the Defendant, and he went, accompanied by MARKS and Corporal DUNN. They went to the 'Swan' and met the Defendant. They shook hands, but there was no conversation till they got to ROUS'S. Then the bandmaster asks the Defendant, "Did you learn any musical instrument in the regiment?" and the Defendant says, "Yes—the French horn," which everybody in the regiment knew. "But," said the Defendant, "I have not played it for several years, on account of the loss of my teeth." The bandmaster took this as conclusive, and that is how M'ELENEY was captivated. I now come to MANTAN, who, I think, is as good a Witness as the Defendant has got. The man is quite true, but he is labouring under a mistaken impression. He is Librarian of Westminster Hospital. In 1867 he met M'ELENEY, and took him home to dinner. At dinner they talked a good deal about ROGER TICHBORNE. Afterwards BAIGENT writes to MANTAN, saying that M'ELENEY has given him his address, and asking if MANTAN can remember ROGER TICHBORNE, and if there is anything by which he would be enabled to recognise him. MANTAN sent an answer saying he thought it possible he might know him from his appearance; but he had no doubt there was a great change in him. He also said he remembered once being very much afraid that ROGER TICHBORNE would be dashed to pieces; that his life was in great danger, and that he could not have forgotten that. Well, now this little incident referred to the fall which ROGER TICHBORNE had from his horse at squadron drill, when his horse shook his bridle out and threw him. It was perfectly well known to CARTER. BAIGENT, I suggest, asked CARTER all about it, and then they made an appointment for an interview with MANTAN. See how they used the information. BAIGENT replied to MANTAN, saying that Sir ROGER had grown very stout, and asks MANTAN to come and see him. MANTAN agreed to come; but they could not let him come alone. M'CANN escorted him to the station, and went with him to Wellesley-villas, and there there were CARTER and BOGLE. Here he had an interview with the Defendant. At first he said, "I did not know him a bit, and I told him so." "Oh," says the Defendant, with a great show of honesty, "I don't want you to say so, if you do not recognise me. Sit down, and let's have a talk." What do you think they talked about? The very thing about which MANTAN had written to BAIGENT. After he had been there twenty minutes he began to think he saw some likeness to ROGER TICHBORNE; and that is a fair specimen of the way the Carabineers came to recognise him. The Defendant read some affidavits, and he found no difference in his voice in reading and speaking. He did not recognise ROGER'S voice in the Defendant. After the interview MANTAN saw BAIGENT, and told him that the voice was a little more improved and had lost its foreign accent. Well, then, BAIGENT filed an affidavit of MANTAN'S. Just let me read to you what MANTAN says:—"I also recognised his voice, which is firmer than it used to be, and the accent less broken; but, on hearing him read, I found both his accent and pronunciation to be the same as it was when I knew him as an officer in the Carabineers." This is directly in the teeth of what he told BAIGENT was the fact. I say it is a wicked mode of making a man swear a thing. I take MANTAN as a very fair specimen of the way the Carabineers were obtained. MICHAEL CARROLL is the only one I need take of the Colchester group. He was seen by M'CANN in London, and was taken to Wellesley-villa, Croydon, where he had a long conversation with the Defendant about the troop ROGER TICHBORNE was in. And you can understand how, after an hour's conversation with CARROLL, the Defendant could be prepared to see the other Carabineers quartered at Colchester—MOODIE, MARKS, and ROBINSON. When CARROLL went home, is it possible that he didn't converse with them on the subject? Why, a meeting was appointed at the 'Three Cups' for them to be introduced to the Defendant. I say the Defendant was prepared to meet them there, and they

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* THE CHILI DAGUERREOTYPES.

An immense amount of contention has arisen over the Chili daguerreotypes, and those Witnesses for the Claimant who could not recognise them as good portraits of ROGER were subjected to a thorough Mephistophelian cross-examination. What did the real ROGER think of them when they were taken? "*I doubt*," he wrote to Lady DOUGHTY, "*whether you will know me again.* My personal appearance, of which I took so much care, has been so much improved by the tropical sun that I think I look more like a red-skinned Indian than anything else." According to MOORE, they were done when ROGER was equipped to cross the Corderillas, and they were taken by a *ruse*, without ROGER'S consent or knowledge in the first place. ROGER had called to bid the photographer good-bye and he, at MOORE'S suggestion, had his materials ready, and when ROGER thought he was merely looking at him through the glass of the camera, the sun pictures were taken. These facts are beyond dispute, and when the ordinary difficulty of getting a good likeness—*i.e.*, a likeness bringing out the natural expression—is remembered, the difficulty of the Chili daguerreotypes becomes little indeed.

could not have failed to have a chat with CARROLL. Now look at this recognition of MOODIE. MOODIE says he went into the room by himself, and after sitting for about ten minutes with his back to the door, the Defendant came in, tapped him on the shoulder, and said, "Holloa, Sergeant MOODIE, I know you. The last time I saw you, you were only Assistant Farrier." You have a perfect proof of the Defendant being prepared to see MOODIE, as MOODIE was looking out of the window, and the Defendant came and tapped him on the shoulder from behind. MOODIE, you know, was informed of the particular number of his horse. The next Carabineer is MATHER. His name had been furnished by BARRY to HOLMES. MATHER addressed the Defendant in French, but the Defendant asked him to speak in English, so that the gentlemen around could understand. MATHER says he asked him something, and then the Defendant volunteered him some story about a dirty sword, which was known to every man in the regiment. The next man is BURKE, who saw him at Bolton. For the first fifteen minutes there was no recognition, but then he began to talk about the drunken soldier and the riding-school. But he further told us that the Defendant volunteered a statement about finding a man asleep at his post. "He said he thought he never got any man into trouble except the man ROBINSON, who was sleeping at his post." There was no foundation for that beyond the rumour which BURKE had heard of, that ROBINSON was confined in Norwich Castle, whereas ROGER TICHBORNE never was at Norwich.

The LORD CHIEF JUSTICE: *When he was reminded that* ROGER TICHBORNE *never was at Norwich, he said it also occurred in Ireland.*

Mr. HAWKINS: Yes; that is like the story of the albatross and the fish-hook. (Laughter.) Then comes Trumpet-Major LESSWEARE, who said he knew him by three things—viz, the gold lace on the jackets of the band, which it would not be difficult to find out all about; the bandmaster's hat and wig blowing off, and his marrying the barrack-master's daughter (which would be common talk in the regiment); and, lastly, the French postage for pamphlets from Lady TICHBORNE, sent from Paris, which would be equally easily ascertained. But when he comes to describe ROGER TICHBORNE we find he has no real recollection of him, so that his evidence is not worth notice. Next we have TIMOTHY MARKS (the brother of Sergeant-Major MARKS, who was not called). He professed to have a recollection of him from his running a race with GREENWOOD and Colonel BICKERSTAFFE. In the latter, so far as he is concerned, there is not a word of truth. Then comes MUNDAY, and he says that seeing the Defendant cross from his carriage to the Sessions House, he recognized him "on the instant, without the shadow of a doubt;" and when you remember that the Defendant himself said that he was so much altered that they would not know him without some conversation, I should be wanting in respect to you if I made another remark upon such a Witness. Then we come to the old pitman, DAVIES, who came all the way up from the Potteries. He does not seem to have recognized the Defendant very rapidly, and he said unless he answered two or three questions Witness would not believe that he was the man. He asked first about the donkey, and he got an answer; but that was a matter which was well known in the regiment. Another thing that he spoke about was a cock that had its head cut off. The difficulty is soon disposed of, because the cock was sent to M'CANN to have its head cut off. Sergeant BIRD is next. He gave us the story of the sovereign being given to him at the Irish barracks by ROGER TICHBORNE after his father went away, which we know not to be true, because we are aware that ROGER accompanied his father when he went away. I must not altogether pass over BRITTLEBANK, who saw the Defendant on the 26th of August at Birmingham; and, although he could not see him, recognised him by his voice at a public meeting. He saw him surrounded by his committee, and the Defendant turned round, professing to know him, but at the same time saying how changed he was, so that it is clear some one had told him, and it is immaterial whether that was done by GALL or one of the committee men. Afterwards the Defendant asked BRITTLEBANK if he knew a man named LYONS, and whether he recollected a stable being burnt at Fermoy by a candle being dropped amongst the straw. But BIGMORE showed us that at a previous date the Defendant knew nothing of LYONS and was mistaken about the stable. BROADHURST says that when the regiment arrived at Herne Bay from Dublin, Colonel JONES stood on the pier and shouted that the orders for India were countermanded, and the Defendant, who was on the deck of the Duke of CORNWALL, said, "Yes, I am a ruined man." They arrived at Herne Bay on June 4. I have a letter from ROGER to Mr. GOSFORD, dated the 9th June, stating that the order countermanding the troops for India had not arrived till that morning. I promised you I would not trouble you much with the Carabineers, and I don't mean to trouble you any more, and for that I dare say I shall have your gratitude. In looking at the military evidence you have nothing to do but to look back and ask yourselves what was the state of his military knowledge. What did he know of the little incidents that happened, or the anecdotes of the little tricks played in the Carabineers, in 1866, when he was with GIBBES, and had the interview with him? and what did he know in March when he had the interview at Croydon with Mrs. RADCLIFFE and Mrs. TOWNLEY? What did he know till CARTER was in his service? If he did not know these things before then, they must have been acquired from some source since that time. The question is whether he knew them then. With these observations I leave the subject of the Carabineers, and I promise you I shall not return to it again.

[The Court then adjourned.]

ONE HUNDRED AND SIXTY-FIFTH DAY.—FRIDAY, JANUARY 23RD, 1874.

The Trial at Bar of the Claimant for perjury was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH.

In consequence of the expected proceedings with respect to Mr. WHALLEY, M.P., the Court was crammed in every corner. Dr. KENEALY was present, but he did not appear for the hon. member, who was represented by Mr. MORGAN LLOYD, Q.C. Mr. HOLLINGSWORTH, the Proprietor and Editor of 'The Peterborough Times,' was also in attendance.

Mr. LLOYD, addressing the Court, said:—I appear before you on behalf of Mr. WHALLEY in this case, and I wish, first of all, to express his sincere regret that anything should have happened with which he may be directly or indirectly connected, and which in your lordships' opinion, can in any way amount to a Contempt of this Court. Whatever may have taken place, Mr. WHALLEY had not the slightest thought or intention to do anything which might amount to a Contempt of this Court, or to an interference with the due administration of justice; and if after the few remarks which I shall make you should be of opinion that a Contempt of this Court has been committed, for which Mr. WHALLEY is responsible, I am instructed on his behalf to offer the fullest apologies to your lordships. Your lordships will perhaps permit me to call your attention to one or two facts and circumstances which, in my humble judgment, may have a very material bearing upon this Case. Mr. WHALLEY was not served with the order of your lordships until he voluntarily appeared in the Court this morning; but the moment he saw in an early edition of the evening papers what had occurred, he consulted me whether he had not better come forward and make his explanation which your lordships required, without waiting till process against him had actually been obtained. But he is here, and I will say no more on that subject. The manner in which the matter complained of arose was in this way. Mr. WHALLEY, unfortunately, as everybody now knows, entertained certain notions with respect to the Trial now before the Court which induced him to do, at his own expense, and at great inconvenience to himself, what perhaps most people might deem Quixotic. In the meantime other proceedings were going on before one of the Metropolitan Police Magistrates for perjury committed in this Court by JEAN LUIE, and Mr. WHALLEY'S name was introduced by one of the Witnesses, named GEORGE CLARKE, who gave evidence as to a statement alleged to have been made to him by LUIE. In that statement certain charges were made, directly or indirectly, against Mr. WHALLEY. For instance, JEAN LUIE was said to have stated that he first met Mr. WHALLEY at Brussels, and there were other statements, the tendency of which was to leave the public to suppose he had been criminally concerned with LUIE in the preparation of the evidence. Mr. WHALLEY denies the truth in his affidavit of all those allegations, feeling that the charge——

The LORD CHIEF JUSTICE: WHAT HAVE WE TO DO WITH THAT?

Mr. LLOYD: Only incidentally, my lord. But Mr. WHALLEY, feeling that his character was injured before the public, and before his constituents at Peterborough, by these insinuations, felt naturally very much annoyed——

The LORD CHIEF JUSTICE: But the whole tendency of his letter is to uphold the evidence of LUIE. I don't understand him to say that indignation was excited in his mind by LUIE'S perjury, but he upholds him as a witness of truth.

Mr. LLOYD: I am coming to that. I am now explaining the circumstances under which this letter was written. Feeling indignant at these charges, Mr. WHALLEY was naturally anxious to do something to set himself right——

The LORD CHIEF JUSTICE: There is no mention of any feeling of indignation; on the contrary, the whole purpose of the letter is to uphold LUIE.

Mr. Justice LUSH: As a man who is still to be believed.

Mr. LLOYD: If your lordship will allow me to explain——

The LORD CHIEF JUSTICE: But it strikes me you are making matters worse. (A laugh.)

Mr. LLOYD: Surely the circumstances under which the letter was written ought to be brought before your lordships?

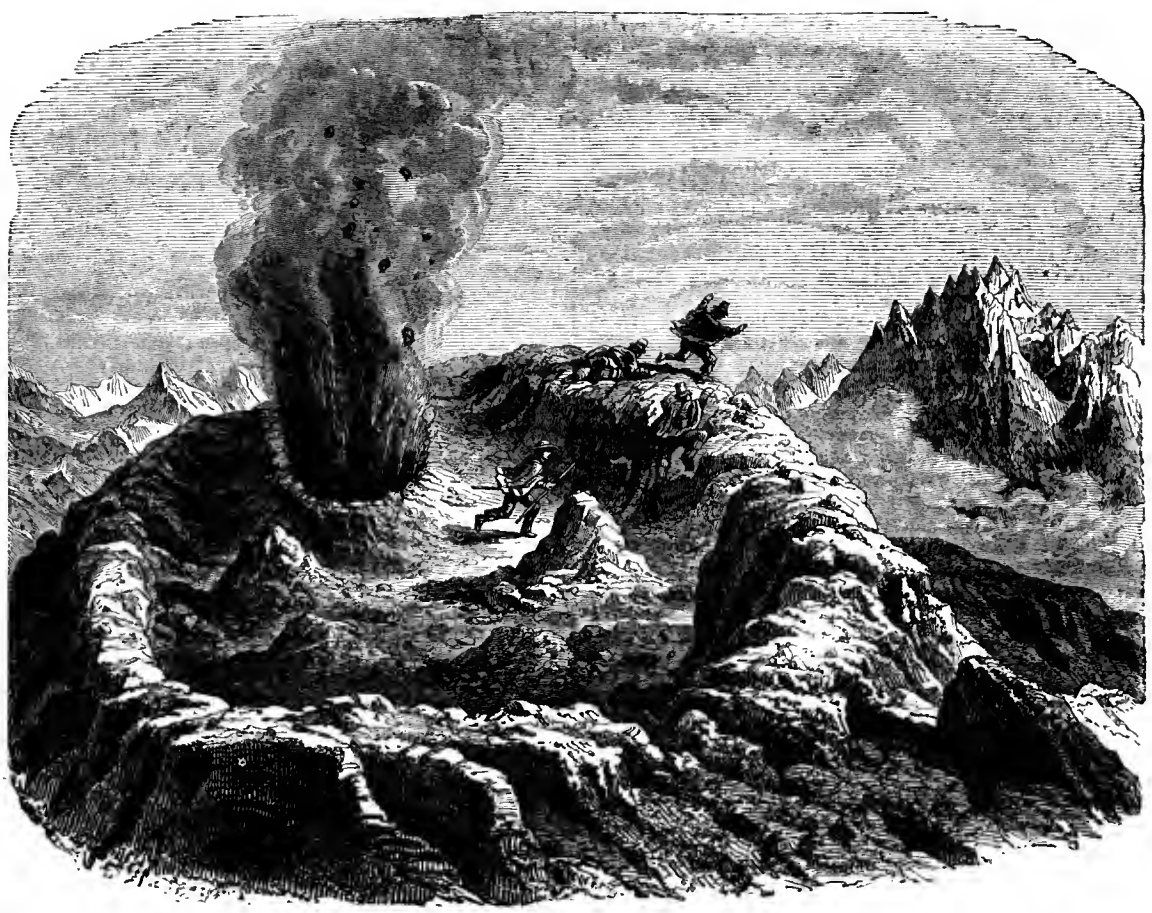
Mr. Justice LUSH: But do not aggravate the offence and make it worse. (Great laughter.)

Mr. LLOYD: My only desire, and the desire of my client, is to lay the matter fairly before your lordships. I am perfectly aware that your lordships are the judges of final resort in this matter, and that it would therefore be very unwise to say anything that would not commend itself to your lordships' approbation; but I will read from the affidavit of Mr. WHALLEY, first, how this document came to be written, and then how it came to be published in the 'Daily News;' after which it will be for your lordships to say whether Mr. WHALLEY is criminally responsible for the publication. Mr. WHALLEY states that he learned from reading the daily newspapers of the 22nd instant that on the 21st it was ordered that a rule should be drawn up calling upon him to answer the Contempt of Court, the order being made on the statement of Mr. HAWKINS of the affidavit of the Editor of the 'Daily News.' Mr. WHALLEY says that he never sent any envelope or slip, nor does he know of any being sent by his authority, nor has he knowledge of any being so sent except in the manner hereinafter described. He goes on to say that he gave the letter to Mr. HOLLINGSWORTH for publication in the 'Peterborough Times,' if after reading the same he should think fit to insert it. He then goes on:

"And I further say that in so far as I may be considered responsible for having written the letter dated the 20th inst., under the circumstances before stated, and for the same having been published in the 'Daily News,' it was not my intention to prejudice the Trial now pending in this honourable Court, nor the trial of JEAN LUIE, nor in any respect to commit Contempt of this Court, and my sole object in publishing the same was to do that which I believed to be essential for the vindication of my character."

The letter having thus been delivered to Mr. HOLLINGSWORTH with the intention that it should be published in the 'Peterborough Times,' Mr. HOLLINGSWORTH thinking no harm and very likely thinking it might not be disagreeable to Mr. WHALLEY, of his own accord sent slips to the 'Daily News' and some other London papers. That is how the matter arises. Mr. WHALLEY'S intention was, no doubt, the publication of the letter in the

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 63.—VOLCANO OF ANTIJO, SOUTH AMERICA.

country, at Peterborough. That publication has not taken place—no thanks to Mr. WHALLEY, for it would have taken place but for these proceedings.

Mr. Justice MELLOR: Were slips sent from Peterborough to the 'Daily News' and other London papers?

Mr. LLOYD: The publisher of the 'Peterborough Times' lives in London, and his paper is printed in town. He printed the letter, and having made some alteration in the beginning sent these slips to the 'Daily News' on his own responsibility.

The LORD CHIEF JUSTICE: Is it to be supposed that a letter from Mr. WHALLEY, of so much interest to the public mind, published in the 'Peterborough Times,' would not be copied out of it, even if the editor had not sent copies to the London papers? Is not a man who sets a thing of that sort going responsible morally, and ought he not to be legally responsible, for what takes place afterwards?

Mr. Justice MELLOR: What is the day of publication of the Peterborough paper?

Mr. LLOYD: To-morrow.

Mr. Justice MELLOR: Then before the publication of that paper the letter gets into the London papers. (A laugh.)

Mr. Justice LUSH: The print is "To the Editor," and somebody has added in manuscript "of the 'Daily News;'" but it is the type set up for another paper.

Mr. LLOYD: It is the type set up for the 'Peterborough Times;' but what I am contending is that the letter has never been published anywhere by Mr. WHALLEY'S authority.

The LORD CHIEF JUSTICE: Supposing there were any foundation for your argument that a man is not responsible for what is copied in one publication when it has been published in another with his sanction, the only difference would be that Mr. WHALLEY, instead of being responsible for what appeared in the 'Daily News,' would be responsible for what appeared in the 'Peterborough Times.'

Mr. LLOYD: But it has not appeared there. Your lordship seems to forget that this is a matter of the most penal nature known to the law. (Laughter.)

Mr. Justice MELLOR: A man must be taken to contemplate the probable consequences of his own acts.

Mr. LLOYD: I don't say that Mr. WHALLEY would not have been glad to have had it published in every paper in the kingdom, but the case stands thus—Mr. WHALLEY having sent it to the 'Peterborough Times,' it is printed for that paper, and before the day arrives for its publication, slips are sent to the 'Daily News.' (Great laughter.)

Mr. Justice MELLOR: Mr. WHALLEY does not say in his affidavit that he was either surprised or annoyed at the publication in the other papers. He merely rests his excuse upon this

that it was not done by his direct authority. I could have understood him expressing his regret at what has occurred, and saying, "I only wanted to vindicate my character before my constituency."

Mr. LLOYD: There is an expression of regret at the end of the affidavit. (Much laughter.)

The LORD CHIEF JUSTICE: Does Mr. WHALLEY say in his affidavit that he did not intend the letter to be published, except, and only, in the 'Peterborough Times'?

Mr. LLOYD: I think it means that, my lord. I will read the passage from the affidavit rather than give my own comment upon it. He says, referring to the documents, "which I delivered to Mr. HOLLINGSWORTH, the publisher of the 'Peterborough Times,' if upon reading the same he saw no objection to such publication." (Laughter.)

The LORD CHIEF JUSTICE: Mr. WHALLEY does not say that it was not intended to be published in other papers as well as the 'Peterborough Times,' and in the absence of any positive statement to the contrary, I should think it highly improbable that Mr. HOLLINGSWORTH, having got the document for publication, would, in anticipation of the issue of his own paper, send a copy of it like a circular to the London daily papers.

Mr. LLOYD: Oh, my lord, we are dealing with a criminal charge against Mr. WHALLEY, and my humble submission to your lordships is that there is no proof of Mr. WHALLEY having acted in any way which would render him criminally responsible to your lordship. (Great laughter.)

The LORD CHIEF JUSTICE: The very sending of the letter to the 'Peterborough Times' is of itself a Contempt of Court, Mr. MORGAN LLOYD.

Mr. Justice MELLOR: In the letter Mr. WHALLEY recites his conversations with LUIE, and the fact of his going to America to obtain a corroboration of his story; and the matter which makes its publication important is this: Mr. WHALLEY, in effect, says, "Notwithstanding LUIE'S own admission of perjury, and after all that has taken place, I still believe that he is substantially telling the truth about the 'Osprey.'" It is that which, to my mind, gives it an importance which I should have thought no other communication from Mr. WHALLEY would have obtained. (Laughter.) *

Mr. LLOYD: I am prepared to meet that; but I think it will be more convenient if I reserve my answer to your lordship's observation until I come to the second part of this Case. I am now simply upon the question whether Mr. WHALLEY authorised its publication in the 'Daily News'; and I submit that, under the circumstances which I have laid before your lordships, Mr. WHALLEY cannot be made criminally responsible for such proceeding, although indirectly its publication may have resulted from his action. (Laughter.)

Mr. Justice LUSH: Suppose that this had been an indictment for the publication of a libellous matter. Do you say that the evidence would not support the indictment though the Defendant did not cause it to appear in the 'Daily News?"

Mr. LLOYD: Most certainly I should say there would not be evidence to support either a civil or a criminal action.

Mr. Justice LUSH: I thought it was ruled that if a person, for a guilty purpose, sets an innocent agent in motion, he is liable for the acts of the innocent agent. There is an old-fashioned case in point. If a person throws a lighted squib at another, and he, in warding it off, causes it to strike some one else, the thrower is nevertheless liable.

The LORD CHIEF JUSTICE: Or, if a person authorises another to publish a libel in paper A, and his agent goes and publishes it in paper B, he is still liable.

Mr. LLOYD: I submit that a man is only answerable for what he authorises to be done.

The LORD CHIEF JUSTICE: But Mr. WHALLEY authorised the publication of his letter.

Mr. LLOYD: No, my lord, he only authorised its publication in a particular paper and for a particular purpose.

The LORD CHIEF JUSTICE: Still that involved an authority to publish.

Mr. LLOYD: Only an authority to publish *sub modo*. In the case which has just been mentioned the thrower of the squib was held to be liable because the act of warding it off was only a mechanical one done in self-defence.

The LORD CHIEF JUSTICE: The fallacy of your whole argument is that this is not a proceeding in strict law. It is a proceeding for Contempt of this Court. There is no technical charge.

Mr. Justice MELLOR: Mr. WHALLEY is simply called upon to answer for his Contempt, and if he gives a satisfactory answer he will go away unpunished.

Mr. HAWKINS: Perhaps I may be allowed to remind your lordships that the language of the rule is for Contempt in writing a certain letter for publication.

Mr. Justice LUSH: Of course it is the writing and the sending of the letter which constitutes Contempt.

The LORD CHIEF JUSTICE: Suppose the editors of the London papers had refused, and it is much to be regretted that they did not refuse to publish this foolish and improper letter, there would have still been Contempt of this Court in sending it to them for publication.

Mr. LLOYD: I should have thought that publication was necessary. There has been no case of the kind from the earliest times; and I do not find any such definition in BLACKSTONE, or Lord HARDWICKE, or any other authority on Contempt. All writers agree that there must be some overt act.

The LORD CHIEF JUSTICE: But there has been an overt act here—the sending of the letter for publication.

Mr. LLOYD: Still I say there is no such instance on record.

The LORD CHIEF JUSTICE: Perhaps there has been no necessity. The case rests upon principle.

Mr. LLOYD: I thought the principle was that it was necessary to keep the fountains of justice pure.

The LORD CHIEF JUSTICE: And to do that you must prevent attempts to pollute them.

Mr. LLOYD: If that is so, a man who sat down and wrote something that never saw the light would be liable. (Laughter.)

The LORD CHIEF JUSTICE: No! No! No! The principle is not to be carried to absurd consequences. What I say applies to a man who sends an improper letter for publication. If you set a wild animal loose you are responsible for the mischief it does.

Mr. LLOYD: But we are not dealing with a wild animal—

The LORD CHIEF JUSTICE: *Don't make rash assertions.* (A laugh.)

Mr. LLOYD: We are dealing with two responsible persons, acting upon their discretion.

The LORD CHIEF JUSTICE: *Did you say "discretion?" It strikes me we are dealing with indiscretion.* (Laughter.)

Mr. LLOYD: I was saying that the printer would have discretion—or indiscretion—for there was no necessity for him to do anything because of the original act of Mr. WHALLEY; and I submit that it is he who is responsible. Before, however, I leave this part of the subject I will read a portion of Mr. HOLLINGSWORTH'S affidavit. He says that he has been a printer for forty years, and is now the publisher of the 'Peterborough Times' and its principal proprietor; that on Tuesday, the 20th inst., Mr. WHALLEY called upon him and asked him to insert the letter complained of in the 'Peterborough Times'; that he, believing it would be of general interest, sent it to the papers; but that he had no authority or direction from Mr. WHALLEY to do so; that he acted on his own authority, but he did so in the belief that it would be no breach of the laws of this Court, or be any contempt thereof; and he certainly had no intention to commit such a Contempt. Under these circumstances, severally, it is clear that this was the act of Mr. HOLLINGSWORTH. I do not justify his discretion, but he acted as a responsible person, and he now takes the responsibility. (Laughter.)

The LORD CHIEF JUSTICE: According to Mr. WHALLEY'S affidavit I do not see that he gave the letter with a stipulation that it should be published only in the 'Peterborough Times.'

Mr. LLOYD: I do not go beyond what is stated in the affidavit, but I submit that is enough. Mr. HOLLINGSWORTH says in his affidavit that though he had no authority from Mr. WHALLEY, he had no doubt it would be his wish to have it published in the London papers. Suppose I sent a letter to a paper in our part of the country, North Wales, I am not to suppose that the editor to whom I send it would send it anywhere else. The man who sends a letter to a paper for publication only justifies the publication in that paper.

Mr. Justice MELLOR: There was a Case—"PARKER *v.* PRESCOTT"—in which a matter was brought before a board of guardians, reporters being present. A statement affecting a man's character was made by one of the guardians, and he expressed a hope that the press would publish it. Another guardian said "I hope so too." The reporters gave a condensed summary. An action was brought against the second guardian, and he was held responsible.

Mr. LLOYD: There is all the difference in the world between the two Cases. In "PARKER *v.* PRESCOTT" there was express authority to publish.

The LORD CHIEF JUSTICE: In this Case there is authority to publish, without any particular limit.

Mr. Justice LUSH: In a well-known book, "STARKEY on Libel," it is laid down that every person who maliciously lends his aid in the publication of a libel is indictable as a principal upon the whole.

Mr. LLOYD: But in such cases there is some concert between the parties to the libel. (Great laughter.)

Mr. Justice LUSH: There is a distinction laid down in the Court of Error between civil and criminal misdemeanors. A

* "Mr. WHALLEY is not appreciated in the Court of the Queen's Bench. Mr. Justice MELLOR, in commenting on the Member for Peterborough's lingering belief in the LUIE episode, found something 'of an importance which he should have thought no other communication from Mr. WHALLEY would have obtained.' It is the fashion to laugh at Mr. WHALLEY, and laughter followed this remark; though whether it is in the best taste for a Justice of the Court of Queen's Bench to follow the prevailing fashion, and make remarks detrimental to the ordinary communications of a Member of Parliament, is very questionable. The Lord Chief Justice, too, 'freely admitted that, after the many indiscretions shown by Mr. WHALLEY, nothing he would say would be likely to prejudice the Jury or the public,' at which there was another laugh; a compliment which was also paid to his lordship's *jeu de mot* about 'Jesuits' bark.' The TICHBORNE Case is one in every way exceptional, but we rather regret to see *facetiæ* introduced into such a very painful and wearisome affair."—'The Evening Standard,' January 24th, 1874.

principal is not civilly liable unless the authority of the agent is fully pursued, but a principal may be criminally liable, although the agent may have widely deviated from his authority. As BACON puts it, if a man incites another to kill a person by poison, and he does it by violence, the principal is still guilty of murder.

Mr. LLOYD: But I cannot help thinking that there is a great distinction between those Cases and the present, because those are differences which do not alter the consequences of the act itself. But here is an essential difference. The letter was intended for publication in this gentleman's constituency, and even if afterwards copied by the London papers it might not have appeared there until it was altogether harmless. I submit this for your lordships' consideration, and it would not be respectful for me to occupy more time upon that part of the Case. I will now call your lordships' attention to the remainder of Mr. WHALLEY'S affidavit. (The learned Counsel proceeded to read Mr. WHALLEY'S denial that at Brussels he had suggested that LUIE should give evidence in the TICHBORNE Case.)

Mr. HAWKINS: I don't know whether the statement of a Witness on oath at Bow-street is relevant to this inquiry. *

Mr. Justice LUSH: It has nothing to do with this matter.

Mr. LLOYD: My client wishes it read. It will be for your lordships to deal with the evidence. (Laughter.)

Mr. Justice LUSH: The only effect will be to aggravate the matter. He contradicts the statement of LUIE.

Mr. WHALLEY: No, my lord, I do not.

Mr. LLOYD: It only contradicts LUIE'S statement in this way. He very excusably, as I think, when he touches upon that as being the occasion which induced him to write this letter, incidentally says this is a charge made against him.

Mr. Justice LUSH: But unfortunately he does not say anything in the letter to discredit LUIE, but rather to accredit him. If he had said "LUIE told a lie about me," it would have been different.

The LORD CHIEF JUSTICE: He says, "I consider that I am called upon to state that nothing which has occurred in relation to this man affects my belief that his evidence as to the 'Osprey' is substantially true." There is not a word about desiring to contradict the statement. The affidavit fails to explain that. When he says that in consequence of the statement of LUIE he was induced to publish this letter, I turn to it and find that its whole purpose is to uphold LUIE.

Mr. LLOYD: I must call your attention to a subsequent paragraph in this affidavit:

"Since the appearance in the newspapers of the report of the said evidence of GEORGE CLARKE I have been frequently applied to by my constituents and others to publish a refutation of such statements: and been wholly at a loss how to vindicate my character from foul aspersions and false charges, otherwise than by publishing the letter of August 26th, as proof of my bonâ fide belief at the time it was written that the evidence proposed to be given by LUIE as to the 'Osprey' was true, and to show there was no foundation for the charges against me in the evidence given by the said GEORGE CLARKE."

The LORD CHIEF JUSTICE: Supposing it to have been published in the 'Peterborough Times,' it is not addressed to his constituents. There is no attempt to vindicate himself in reference to a charge against himself. On the contrary, no one who read the letter could suppose it had any purpose but to uphold LUIE.

Mr. Justice LUSH: There is in it no denial that he met LUIE at Brussels.

Mr. Justice MELLOR: It was as if he said, "Notwithstanding all that has appeared about LUIE, I, Mr. WHALLEY, have had opportunities of discovering what is true, and I assert, despite his own admissions and all that has passed, that his story about the 'Osprey' is true." Mr. WHALLEY has been to America, and it is that which makes his statement of importance.

Mr. LLOYD: I will deal with the contents of the letter immediately; but I must repeat that Mr. WHALLEY states in his affidavit that the reason why he wrote this letter—whatever may be its contents—was on account of these charges made against him by LUIE through CLARKE, and that he had no other means of vindicating his character. (Laughter.)

The LORD CHIEF JUSTICE: He does not vindicate his character, nor even allude to the attack made upon it. Suppose LUIE had stated that he was brought forward to tell this tale at the instigation of Mr. WHALLEY, and Mr. WHALLEY had taken that up without reference to LUIE'S evidence, and had said "I am desirous of vindicating myself?" I could quite have understood it and could have sympathized with it, but he does not do that. The whole scope of the letter is not to vindicate Mr. WHALLEY, but to vindicate LUIE.

Mr. Justice LUSH: Further than that, he puts LUIE'S denial in opposition to CLARKE'S oath. Is not that intended to uphold the credit of LUIE against everybody?

The LORD CHIEF JUSTICE: Is not that the purport of the letter on the face of it?

Mr. LLOYD: Mr. WHALLEY says it is not. He says the object was to vindicate his character. That he has done it in an indiscreet way, I admit. (Laughter.)

Mr. WHALLEY (to his Counsel): I would not admit that for a moment.

Mr. LLOYD: We have minds very differently constituted. There are some men who do everything differently from other men, and whose judgment is very different.

The LORD CHIEF JUSTICE: If a man's want of judgment is such that it don't suffice to keep him in the right path, and he commits breaches of the law, and fails in what is due to the authority of the Court, he must be restrained. (A laugh.)

Mr. WHALLEY (to his Counsel): There, you have drawn that upon yourself— (Much laughter.)

The LORD CHIEF JUSTICE: I cannot for a moment admit that you are to judge of a man's conduct by his want of ordinary common sense. (Laughter.)

Mr. LLOYD: Still it would be a circumstance for your lordships' consideration. (Great laughter.)

The LORD CHIEF JUSTICE: I don't mean to say if you were quite satisfied that a man was so foolish that he could not be restrained we should visit him with the same punishment as we should visit the same affair upon a man who possessed sound judgment. (Laughter.)

Mr. LLOYD: I am making these observations, because I know your lordships have the entire matter in your hands, to deal with in whatever way you may think proper. I will now call your attention to the letter itself. Self-vindication being the motive, how can it be any vindication irrespective of the statement of LUIE? In this way I apprehend he is charged by CLARKE with having been a party indirectly or directly to a false statement made by LUIE, and he says, "I publish this letter to show my bona fides in the matter. Whatever the contents of that letter may be, they prove my bona fides in the matter."

Mr. Justice MELLOR: His bona fides at that time.

Mr. LLOYD: But that was the essential time, because it was alleged that he met LUIE in Brussels, when he endeavoured to induce him to give evidence, and the object of the letter is to show that however mistaken——

The LORD CHIEF JUSTICE: I should quite agree with you if that was the tendency of the communication. If Mr. WHALLEY had addressed a letter to the 'Peterborough Times' adverting to these charges, and then had said, "with a view to show you that at the time I took part in the matter to which LUIE'S evidence related, I was thoroughly convinced of the truth of the statement, and in proof of that I request your attention to the following letter," I should have understood that; but that is not what he does. He prefixes a statement that his belief in LUIE is still unshaken.

Mr. LLOYD: That is so, and to say the least of it, it was a very unwise thing to do. (Great laughter.)

The LORD CHIEF JUSTICE: I should be very sorry, however indiscreet and foolish his conduct may have been, to say I disbelieve Mr. WHALLEY on his oath, but there is the letter, and the oath of twenty men would not put upon it a different construction.

Mr. LLOYD: I will read the letter. [The learned Counsel read the letter which appears in the INTRODUCTION, page 262]. The statements he refers to were the statements of Mr. WHALLEY himself. Well, no doubt he very injudiciously—instead of saying, "May prejudice me"—says, "May prejudice the Trial."

The LORD CHIEF JUSTICE: Certainly. That is what makes all the difference.

Mr. LLOYD: There was, no doubt, great indiscretion shown by his acting in that manner, but his object was his own vindication, and I am sure that your lordships will take that into your consideration in dealing with the case. Now, as regards the effect which that part of the letter may have upon the Jury or the public, I wish to say that——

The LORD CHIEF JUSTICE: Are we not to judge of the crimi-

* The weakest and most despicable exhibition of abject meanness that ever took place in Westminster Hall could not exceed this of Mr. MORGAN LLOYD. COCKBURN absolutely kicked him; and the Counsel smiled meekly and submissively at every kick. HAWKINS said of it: "LLOYD is like a Russian swallowing tallow candles; the only difference is, the Russian enjoys it—but he don't."

nality of the proceeding by its effects? I freely admit that after the many indiscretions shown by Mr. WHALLEY, nothing he could say would be likely to prejudice the Jury, or even the public. (Laughter.) But does not the effect which a thing may produce upon the public mind, but the act of which the writer or the publisher may have been guilty, apply to the question whether it does not amount to a violation of the law and a Contempt of Court?

Mr. LLOYD: Well, my remarks are intended to be made with a twofold object. I have not intended what I have hitherto said as a complete defence to the charge which Mr. WHALLEY is called upon to answer; but I have put forward observations which I consider pertinent to the question as to whether he is responsible or not for the publication which has taken place, and have urged reasons in mitigation of the charge. At the time this letter was published LUIE'S evidence had been given up by the Defendant's Counsel, and therefore it was out of the Case altogether. (Laughter.)

The LORD CHIEF JUSTICE: But here is a gentleman who comes forward and, in effect, says, "Gentlemen of the Jury, notwithstanding all that has taken place, I believe in LUIE, and that is a good reason why you should. I believe in him, and I will give you abundant reason for it."

Mr. LLOYD: This part of my argument is in mitigation, and I contend that its publication would not have any effect upon the Case. What possible influence could it have?

The LORD CHIEF JUSTICE: It is no less criminal because the weakness of the hand makes it fail in effect. If a man strikes at another with a sword, and fails to wound because his hand is weak, his intention is no less criminal.

Mr. LLOYD: Still, no doubt it would make a difference in the punishment. (Loud laughter.)

The LORD CHIEF JUSTICE: I doubt that very much. It would not if I had the dealing with it. (Laughter.)

Mr. LLOYD: Well, I think I have heard your lordship deliver judgment in cases where such circumstances have been taken into consideration more than once.

The LORD CHIEF JUSTICE: If one man intended to poison another, but failed because he did not make the dose strong enough, I should think him none the less criminal.

Mr. Justice MELLOR: The moral criminality in many cases which occur is exactly the same, although the result falls short of the effect intended.

Mr. LLOYD: But in this case I cannot disassociate from the case the object which Mr. WHALLEY had in doing it, namely, his own self-defence, although he may have gone beyond what he intended to do with the view of effecting that object. I contend that the effect upon the Trial is an important matter for your lordships' consideration. I apprehend that that is the material circumstance for your lordships to consider. This case has been published *ad nauseam* in the newspapers, and everybody has made up his mind about it—everybody, of course, but the Jury. (A laugh.) That, perhaps, would not be without its weight in dealing with a Case like the present, which has become so notorious that everybody would be glad to see the end of it. Now, having said that much, I will just read another paragraph from Mr. WHALLEY'S affidavit:—"That I desire to express my most sincere regret for anything I may have done which may be construed into a Contempt of this honourable Court, and beg to tender to your lordships my humble apologies for the same. That I have not, and never had, the slightest interest, present or prospective, in the issue of the Case now pending in this honourable Court, and that all expenses incident to my visit to New York, and every other cost and outlay which I have incurred in relation to this Case have been borne by myself and at my own charge for the last four years. I have been repeatedly referred to in this Trial by Mr. HAWKINS as having tampered with the Witnesses, and having improperly procured evidence on the part of the Defendant; and I say that, having submitted myself as a Witness, no questions were asked to justify such imputations, or to afford me the opportunity of replying thereto, and on that account also the publication of this correspondence complained of, appeared to me to be requisite." Now, my lords, I have laid before you such facts and circumstances as appear to me to be necessary to be brought under your lordships' attention. If your lordships should, notwithstanding the observations I have made, hold Mr. WHALLEY responsible for this publication in the 'Daily News,' and further should hold that the publication, notwithstanding what I allege to have been the object of it amounts to a Contempt of this Court, I have only, on his behalf, to repeat what I said at the commencement, namely, his determination, even though he may possibly at any future time be aggravated by remarks that may be made to submit quietly to them rather than run the risk of doing anything further which would amount to Contempt of this honourable Court. He submits himself to your judgment, and entreats your lenient consideration of what has been urged in his behalf.

Their lordships having consulted together for about ten minutes,

The LORD CHIEF JUSTICE said: We are of opinion that, by the publication of these letters, Mr. WHALLEY has been guilty of a Contempt of this Court. It is quite clear that he sent the letters in question to the 'Peterborough Times,' with a view to publication in that paper. The letters, however, have not hitherto been published in the 'Peterborough Times,' for the simple reason that that paper is not, as I understand, published until to-morrow. If the matter had rested there I should have entertained very serious doubts whether Mr. WHALLEY would not, by his attempt to cause the letters to be published, have been guilty of a Contempt of this Court; for a matter of this kind is not to be judged of and decided by the strict principles applicable to the Trial of an indictment. This Court prohibits the publication of matter having reference to a pending Trial, because it desires to uphold the entire and absolute integrity of a judicial proceeding, and it is not because an attempt thus to interfere with the authority of the Court may fail in being carried into effect that a Contempt is the less committed of the authority of the Court. But we think it is not necessary in the present case to rest our position upon any such foundation. We are of opinion, notwithstanding the qualified denial—I say qualified denial, for such it is—of Mr. WHALLEY, that these papers were handed over to Mr. HOLLINGSWORTH, the editor of the 'Peterborough Times' to be published at his discretion, certainly in the 'Peterborough Times,' but in other papers, if Mr. HOLLINGSWORTH should think it expedient so to publish them. That was the impression produced upon Mr. HOLLINGSWORTH'S mind by all that passed between him and Mr. WHALLEY; and there is no appearance of any qualification of the authority, nor is there any positive or explicit denial on the part of Mr. WHALLEY that the authority was qualified and limited to the publication in the 'Peterborough Times' without the authority to publish it elsewhere. We come, therefore, to the conclusion that the authority which Mr. HOLLINGSWORTH had was at his discretion to publish, not only in his own paper, but in other papers, if he thought fit. Now, that being so, there is in my mind no doubt whatever that these letters amount to a Contempt. It is quite true that LUIE, in the statement which he made to Inspector CLARKE, had said things which seriously compromised Mr. WHALLEY, and I can quite understand Mr. WHALLEY'S anxiety to clear himself of such matters in the eyes of his constituents at Peterborough; and, indeed, in the eyes of the world at large. It is not because such might have been his purpose that this Court can allow a Contempt to be committed by interference, by means of published letters, with the Trial that is pending here, and therefore, though that has appeared beyond all possibility of doubt to have been the motive which induced Mr. WHALLEY to publish these letters, we could not have taken that as anything in the shape of an excuse for what would have been a Contempt of the Court. But I can only say, for my own part, that I cannot accept that statement. It may possibly have been present to his mind that there had been matters stated by LUIE seriously affecting and compromising him, and it may have been one of the motives which led to the publication of those letters that he desired to place himself right in the eyes of his constituents. But the letters do not carry that interpretation with them—they do not admit of that interpretation. It may have been one of the motives latent in Mr. WHALLEY'S mind, but it certainly was not a motive that could have been patent to those who read the letters. The purpose and object of the letters, as apparent upon the face of them, and to be gathered from the contents, is that Mr. WHALLEY intended to set up his opinion against the opinion of the learned Counsel for the Defendant in this Cause; and to maintain in the face of the world, and in the face of the Jury and of this Court, that the statements made by LUIE in his examination here were true. That is a direct interference with the proceedings here which cannot possibly be tolerated by this Court. At the same time, we have been willing to take into consideration any circumstances which might fairly operate in mitigation of the penalty which we think ought to attach to this Contempt. We feel the force, to a certain extent, of what Mr. MORGAN LLOYD urged upon us, that this Trial has now proceeded so far, and opinion in-doors and out-of-doors has been so far developed, that it is not likely that what any one may write about it would now have any influence upon the mind of the Jury, or indeed the mind of any one else. But although that may be so, still here is a direct interference with the ordinary course of justice attempted by the publication of these letters. True, it is not shown positively there was an authority to publish these letters elsewhere than in the 'Peterborough Times.' About that there is just a possibility of doubt, and we shall give Mr. WHALLEY the benefit of that doubt to this extent: that, whereas if he had intended to publish these documents in question, not simply for circulation in Peterborough amongst his own constituents, but through the London papers to the world at large, we should have treated that as a Contempt which we were bound to visit by personal imprisonment. But under all the circumstances, though not without very considerable hesitation, we are willing to stop short of personal imprisonment in the sentence which we are about to pronounce, especially as Mr. WHALLEY, through his Counsel and in his affidavit, has made an apology to the Court, and through his Counsel has assured us he will abstain from any open publication or discussion of the matters connected with this Trial. But stopping short of imprisonment, we certainly cannot allow Mr. WHALLEY, who has committed this Contempt of Court, to pass without punishment. We have already through the former sentence of the Court, which was one of exceeding leniency, and which we had hoped would have had the effect of stopping this gentleman from the rash and indiscreet conduct which he has on more than one occasion pursued, given him warning. That warning has not taken effect, and the pecuniary penalty, therefore, to which we are willing—not with-

out very great hesitation, as I have said—to limit the penalty must be one of a heavier character than the former. On the whole, we say that Mr. WHALLEY has been guilty of Contempt of the authority of this Court, and that for that Contempt he is condemned to pay a fine of £250 to the QUEEN, and to be imprisoned until that fine is paid. My brother MELLOR reminds me that there is a process by which the fine may be recovered, and as we do not wish any unpleasantness to Mr. WHALLEY, the latter part of the sentence may be considered to be withdrawn.

Mr. WHALLEY here rose from his seat, and, turning towards his Counsel, was understood to say that he should decline to pay the fine.

After a brief pause,

The LORD CHIEF JUSTICE said: Do we understand Mr. WHALLEY to have said that he would not pay the fine?

Mr. LLOYD: (hesitatingly, and with his hand upon the shoulder of Mr. WHALLEY, who had remained standing up): No, my lord. I say on his behalf——

The LORD CHIEF JUSTICE: No hesitation whatever. If there is any hesitation, then let the sentence stand as I pronounced it just now—imprisonment till the fine is paid.

Mr. LLOYD: My lord, one word——

The LORD CHIEF JUSTICE: If Mr. WHALLEY says one thing and you another, I will take Mr. WHALLEY'S word in preference.

Mr. LLOYD: Thank you, my lord.

The LORD CHIEF JUSTICE: Do not misunderstand me, Mr. LLOYD. If you say Mr. WHALLEY will pay, and Mr. WHALLEY says, "I won't," I think he is more likely to prove right. (Laughter.) Therefore the sentence must stand as I have pronounced it—imprisonment until the fine is paid.

Mr. WHALLEY: May I be permitted to say a word?

The LORD CHIEF JUSTICE (emphatically): Certainly not.

Mr. WHALLEY then left with Mr. FRAYLING, jun., the Tipstaff of the Court, and was subsequently conveyed to Holloway Prison. *

After the excitement caused by this episode had somewhat subsided,

Mr. HAWKINS rose and resumed his address to the jury. He said: Gentlemen, I disposed last night of all those Witnesses called on the part of the Defendant to express their opinion as to the identity of the Defendant with ROGER TICHBORNE. They were divided into two classes—those who professed to recognise the Defendant after a period of nearly 20 years by his features, or the tone of his voice, and those who were struck by what I designated the Defendant's pretended recollections of old times. I propose now to refer very shortly to the evidence offered on behalf of the Crown. Of ROGER TICHBORNE'S family I presented to you no less than 20, and to their testimony I added the dying testimony of Lady DOUGHTY herself, she having had ample opportunity of seeing the Defendant, and of hearing his examination. I called Lady RADCLIFFE and her husband, Mrs. and Misses NANGLE,† Mrs. HIBBERT, Mrs. TOWNLEY, Mrs. HIGGINS, and, in fact, all the members of the TICHBORNE family, including Colonel GEORGE GREENWOOD. I have called before you every living member of the SEYMOUR family, and I don't know what further evidence I could have asked you to listen to. You have had from Stonyhurst and from Paris all the gentlemen, with only one exception, who knew him there. You have had from Stonyhurst some of the preceptors and some of his friends and associates. Amongst his father's servants called were GOSSEIN and BRAND; and you have had, also, some of the oldest inhabitants of Tichborne. You have had those who cannot be called members of the family who associated with him in Ireland; you have had those who were connected with him in business; you have had a host of his brother officers, not a single one of whom can be attacked on the ground of his being prejudiced by any interest in the inquiry. I put it to you whether, from this volume of testimony, if I were so minded, I might not select many whose testimony, standing alone by reason of their greater and more intimate knowledge of ROGER TICHBORNE, would outweigh the evidence of the accumulated mass of those who have been called on the part of the Defendant, and who had with ROGER TICHBORNE after all but very slight acquaintance indeed. Among those whom I have called there were many who have watched him in his growth from his infancy. They have watched him morning, noon, and night, and knew his tastes and all his peculiarities. Is it possible that this large body of Witnesses could be mistaken when they pronounce their judgment that the Defendant is the impostor he is charged to be, and not ROGER TICHBORNE? I ask you are they, or are they not, corroborated in the opinion they have formed? Is there one circumstance in the whole of the evidence which does not fully corroborate them? I don't mean to trouble you again by describing the person or the features of ROGER TICHBORNE. They have been described to you so often that it would be wearisome to you to describe them again. But you have before you two daguerreotypes which were taken of ROGER TICHBORNE—I will not say at the last hour of his life, but they were taken within a few weeks of his embarkation on board the 'Bella,' and within the last few weeks of his life. There can be no question at all as to those likenesses, because in the letter which was written by ROGER TICHBORNE to Lady DOUGHTY he describes them as "two fair likeness which I have had taken of myself at Santiago." In the Defendant's own affidavit he was absolutely ignorant that they had been taken at Santiago, but swore that they were taken at Southampton; and afterwards, when his attention was called to ROGER TICHBORNE'S own letter, he said in cross-examination, "Well, if they were taken at Santiago they were taken when I was in such a condition that I knew nothing at all about it." That proves the total ignorance of the Defendant upon this and many other things appertaining to the personal life of ROGER TICHBORNE. Gentlemen, you have, moreover, before you a photograph which was taken of the Defendant himself in Sydney and sent home to Lady TICHBORNE—a photograph which was taken before he had grown to the enormous bulk which he now presents, and you will be able to compare that with the photograph of ROGER TICHBORNE. I submit to you that every action of the Defendant is at variance with all that we know of ROGER TICHBORNE—his shunning ROGER TICHBORNE'S most affectionate and dearest relatives and friends, his forgetfulness of what ROGER TICHBORNE was least likely to forget, and his pretended remembrance of what ROGER TICHBORNE was least likely to remember. His forgetfulness of the contents of the Sealed Packet, which ROGER TICHBORNE handed over to GOSFORD, contrasted with the pretended remembrance of the number upon the hoof of a horse of a private soldier, shows a forgetfulness of that which ROGER TICHBORNE could not have forgotten side by side with a remembrance of that which it would be very difficult for any man to remember, and impossible for the Defendant to remember if he were ROGER TICHBORNE, and yet had forgotten the contents of the Sealed Packet. I have already commented upon the visit of the Defendant to Alresford. You will remember that he never accepted the invitation which Mrs. GREENWOOD had given him to call at Brookwood, and she never saw him at all until the month of July at the Law Institute, and then she said that her only surprise was how the Defendant could have had the courage to come forward and assume to be the ROGER TICHBORNE she had formerly known. I have called your attention to the fact that Colonel GREENWOOD was unnoticed by the Defendant at the Law Institute. There was absolutely no recognition whatever. I call your attention to the fact that, in the opinion of Colonel GREENWOOD, BAIGENT had to point him out as Colonel GREENWOOD; and there is no contradiction given to that suggestion. Afterwards, it is true, in 1868, that is, a year and a half after the Defendant had arrived in England, and when there had been ample opportunity of learning a great deal about the TICHBORNE family, he had an interview with Colonel GREENWOOD. There is no man among you who can entertain a shadow of a doubt not only that Colonel GREENWOOD spoke the truth to the best of his knowledge, but accurately. Colonel GREENWOOD told us how particular he was about little incidents, which he put down in his pocket-book. The Counsel for the Defendant told you it was a wonderful thing that the family all seemed to keep diaries. I think the Counsel hardly knew what he was saying. It was evidently a habit of the TICHBORNE family. We heard from Mr. GOSFORD that ROGER TICHBORNE kept diaries, and when he left for his travels, if he did not take them with him, who would he leave them with? In whose care were they likely to be left? Lady TICHBORNE had many of his letters, and somebody had charge even of ROGER'S old regimentals. Well, Colonel GREENWOOD produced his diary, and told us how many times ROGER assisted him in raising the cairn. He tells us that it was raised by throwing up the stones, and that there was no wheeling up a plank, as the Defendant stated. These are little matters; but the accumulated mass of them gives importance to every one of them. Colonel GREENWOOD on one occasion went off in great haste to fetch a doctor to Mrs. LEGGE, who was at his house, and said that near Kingston, on his way to Leatherhead, he took off his coat and hid it under a hedge. On his return it was gone, but on reaching home he discovered that somebody had found it and taken it home for him. In June, 1868, Colonel GREENWOOD met the Defendant. At the invitation of Colonel LUSHINGTON, he went to sit in the same carriage with the Defendant, for the purpose of putting questions to him. He had already come to the conclusion he was not the young man he formerly knew; but Colonel LUSHINGTON is a gentleman; and when he said, "Have you any objection to go into the carriage and ask him a question or two?" Colonel GREENWOOD at once consented to do so. When this was done, Colonel LUSHINGTON said to the Defendant, "Tell Colonel GREENWOOD something, if you can, which is known only to you two." Well, he had picked up an erroneous story as to the coat; for, after a few minutes' thought, he said, "Did not you hide your coat in a hedge at night when going on foot to Winchester on your way to London?" Now, that was not a thing known only to two of them, and, moreover, ROGER TICH-

* For a full account of Mr. WHALLEY'S imprisonment and the subsequent Parliamentary enquiry, with full copies of the affidavits &c., see the INTRODUCTION, pages 259-264.

† A laughable instance occurred during the Trial in the Common Pleas. The Solicitor-General asked the Claimant if he told Dr. HAYLEY that his father was a butcher, and that he had run away from his ship. The Claimant replied, "Good gracious! No," which was received with a titter by his genteel opponents, as smacking of Wapping vulgarity. On a subsequent day, Mrs. NANGLE, being asked, "Is he (the Claimant) your nephew?" exclaimed excitedly, "Good gracious! No." Her answer caused great merriment among the Fanatics and Fools in Court, who hailed it as an involuntary admission of her propinquity to the Claimant—One touch of nature made them kin.

BORNE could not have known it except by hearsay, for he was in Ireland when it happened. There was another thing which ROGER TICHBORNE must have known, but of which the Defendant knew nothing. Miss DOUGHTY had a horse named Rowena. Colonel GREENWOOD asked him about it, and he knew no more of the name or colour than if she had never had a horse at all. I take Mr. HENRY and Mr. ALFRED SEYMOUR, and I do not trouble you by repeating any portion of their evidence, because you have had them before you and have heard them examined and cross-examined. Nor shall I say anything of the other ladies of the family who were called before you, because it would be an idle and wearisome thing if I were to repeat testimony which you have before you, and which you have heard given. There are, however, two or three Witnesses who deserve a passing comment, and amongst them is Viscomte de BRIMONT. He was a gentleman who knew ROGER TICHBORNE, and was his cousin. Why should not the Defendant wish to see him? They were both stopping in the same hotel, and Viscomte de BRIMONT said how glad he should be to see him, and the Defendant intimated that he should be ready to see him, but afterwards he withdrew the consent, because, as he said, his Counsel advised him not. That was his only excuse. As to the death's-head pipes, several persons knew about them, including Viscomte de BRIMONT. We had Mr. HEYSHAM, an old friend of the TICHBORNE family, before us, but so little did the Defendant know of him that he spelt his name "ASHAM." Mr. MANSFIELD heard so much of the knowledge acquired by the Defendant that he was somewhat puzzled at one time to account for it; but it required only that he should see and hear him to be as satisfied that he could not be ROGER TICHBORNE as to be certain of anything that ever occurred in his life. Mr. FITZGERALD, who had known him years ago, also affirmed his disbelief of the identity of the Defendant with ROGER TICHBORNE. I now come to the officers of the Carabineers. General JONES says he saw ROGER at mess and in the barrack-room every day, mixed with him in society, and joined with him in keeping a pack of harriers. He says he remembers that while the regiment was at Cahir, ROGER TICHBORNE was examined for his lieutenancy. The Defendant says it was at Dublin, which was not the case. General JONES mentions his being called to ROGER when he was suffering from an attack of asthma, when he was thought to be dying, and stayed the night with him, and when ROGER TICHBORNE left the regiment he expressed his regret at parting from the general as one of his best and dearest friends. Is General JONES a gentleman whom ROGER TICHBORNE would be likely to forget? Yet when they met at the Law Institute and looked into each other's faces the Defendant was utterly unable to recognise his old friend General JONES, who was equally unable to recognise ROGER TICHBORNE. Another name which ROGER TICHBORNE would have known was that of Colonel BICKERSTAFFE, who told us of the incident of ROGER TICHBORNE having to wade through the mud at Howth, and of the plight in which he joined the regiment. The Defendant did not know that he even joined at Dublin at all, for he told Mr. BULPETT he had joined in Canterbury. The Defendant's military history was badly got up for him. If you take Colonel BICKERSTAFFE'S evidence, it will show you how wanting the Defendant was in all knowledge of that which ROGER TICHBORNE, as a young officer, could not have forgotten. ROGER TICHBORNE was a person who was not ignorant of his profession. Colonel BICKERSTAFFE said he exhibited great anxiety to learn his duties, and that in theory he understood them well. He could go through the drill on the table with pieces of card, but on horseback he seemed to forget, his attention being directed to his horse chiefly. He knew the difference between a troop and a squadron, which the Defendant did not; and he knew the number of men which ought to be in each troop, and many other things, all of which the Defendant is absolutely ignorant, even in 1871. There again I suppose there had been nothing to direct his attention to the necessity of learning these matters, which, as a young officer, ROGER TICHBORNE could never have forgotten. You never will forget the memorable occasion when Colonel BICKERSTAFFE said he was present when ROGER TICHBORNE was bled, first in the arm, then in the ankle, and afterwards in the temporal artery; nor will you ever forget this—that when he saw him afterwards ROGER TICHBORNE, speaking of what had occurred, said "You did save my life." These are things in a man's life which no lapse of time can obliterate from his memory, and yet the Defendant knew nothing of them whatsoever. Captain POLHILL-TURNER, again, was ROGER TICHBORNE'S constant companion. They used to play écarte together. Mr. MORTON'S house was a home to them. They were very hospitably entertained there whenever they thought fit to pay a visit. Afterwards, in August, 1850, they went to Waterford, and there Sir HENRY WINSTON BARRON lived, whose daughter Captain POLHILL-TURNER afterwards married. At Barroneourt these two young officers were constant guests. When asked about Lady BARRON, the Defendant had not the least notion of the existence of such a person.

Dr. KENEALY: There is no evidence that ROGER TICHBORNE was a constant guest at Barroncourt, or anything like it.

Mr. HAWKINS: I do not care whether you call him a constant or an occasional visitor; but that he knew the BARRONS, that he was a guest at their house, and that his friend Captain POLHILL-TURNER married the daughter and left Waterford, is certain; and my observation is not in the least degree weakened. Gentlemen, I do not mind these interruptions; they are useless—they do not put me off; they only delay me.

The LORD CHIEF JUSTICE (referring to the evidence): If you substitute "frequent" for "constant" you will be right.

Mr. HAWKINS: Yes, my lord; both are words of two syllables. (Laughter.) But not only are they visitors there, but Captain POLHILL-TURNER'S troop used to drill in the park. Well, gentlement, there is no knowledge of Sir HENRY or Lady BARRON, nor had he a much better knowledge of Waterford, for he describes the bridge as a bridge of stone, whereas it was a wooden bridge. He did not know Waterford, because he had never been over there. Ignorant as this Defendant was of the word of command, let us see what he says he knew in 1851. He says that Captain POLHILL-TURNER on one occasion forgot the word of command to draw the troops out, and he (Defendant) came to his assistance, but he could not tell how they were drawn out, nor could he tell you how to draw them out now. That is an incident which Captain POLHILL-TURNER says never occurred. I don't trouble you by repeating the testimony of Major JOCELYN, which you must well know. In July, 1867, he received a circular requesting an interview, and Major JOCELYN wrote asking him to come to the Army and Navy Club, but he never went to see Major JOCELYN. Major FORSTER was a person who was similarly acquainted with him, and there was a little thing connected with him which ROGER TICHBORNE would never have forgotten, and that was the circumstance of his having sent ROGER in full uniform to dine with Lady CLANRICARDE. Major FORSTER, when he is recalled, contradicts the statement about firing the revolver and sticking the sword in the door post. Why did he not, if he were ROGER TICHBORNE, go down to see Captain MANDERS, as he was just the sort of person he would have liked to have seen? He went to Marlborough for the purpose, and remained at the hotel, and instead of sending to Captain MANDERS, who was only living a stone's throw away, he falls suddenly ill and returns to town, and did not afterwards make any effort to see Captain MANDERS. The question is whether he was not afraid to go to see Captain MANDERS. I pass over Mr. STORES SMITH, because I have not the time to discuss it, not because I do not attach much importance to his evidence. You remember how he told us that Mr. SPOFFORTH, when they got into a mess, said, "Try another card." We have had a good deal of comment on Mr. STORES SMITH, and it has been said that he is not to be relied upon. But if not to be relied upon why not call Mr. SPOFFORTH to contradict it? Mr. STORES SMITH swears positively that the Defendant is not the man; and if I were to occupy your time for an hour I could not make the value of Mr. SMITH'S evidence stronger than it is. Mr. M'EVOY went down to see the Defendant as early as 1867, having been invited by Mr. GUILDFORD ONSLOW. He had been at Portobello, and he said, "The moment I saw the Defendant, I was certain he could not be ROGER TICHBORNE." When he began to talk to him, he said he was discharged at Canterbury—an error which was excusable at that early period. He knew nothing at all about Howth Castle; and the result was that Mr. M'EVOY having previously accepted an invitation to dinner, made the best excuses he could and came away. A day or two after Messrs. BOTT and BETTY went down at the request of Mr. HOLMES, and the result was similar. Captain FRASER was as familiar with ROGER TICHBORNE as anyone in the regiment, and the Defendant passed him on the steps of the Law Institution without at all recognising him. The Defendant afterwards wished to meet the Captain at his seat near Yarmouth, and wrote to him requesting an interview, and stating that a friend of his, who conveyed the letter asking for an interview, would show him Captain SHERSTONE'S affidavit and some of the CASTRO correspondence. Captain FRASER, having seen the Defendant, could not recognise him as ROGER. The Defendant pressed for another interview. At last Captain FRASER said to him, "If you are ROGER TICHBORNE you will remember something that happened to us alone." He was thinking especially of the presentation to himself by ROGER of a wooden snuff-box. When questioned in reference to that matter the Defendant was absolutely at sea, and said he could not recollect anything about a snuff-box. Some time after he said, "If you are thinking about a silver snuff-box I gave you, that's the thing." The reply was that that was not the thing; he had not learnt the whole story. Captain FRASER might at some time have shown some one a snuff-box and remarked that it was given to him by ROGER TICHBORNE, and the Defendant might have heard of that. He said it was a silver snuff-box. Could the Defendant's Counsel have read what his client swore on that subject in his cross-examination, that he treated the matter as one of the random stories which were of no importance? [Mr. HAWKINS then read the letter of the Claimant to Captain FRASER, in which he spoke of the snuff-box as a silver one, and the evidence of the Claimant with regard to the circumstances of the gift, in which he said that to the best of his recollection he, having handed to the Captain the snuff-box to take a pinch of snuff, he put it in his pocket, and he then told him he might keep it.] There was a lie with a circumstance. The incident connected with the snuff-box was a most striking one. The Defendant said that the snuff-box was an old one, which he bought in Piccadilly, and gave to the Captain under the circumstances just mentioned. Such was the evidence which the Defendant's Counsel said was "very much in his favour." (Laughter.) Again, the Defendant said that ROGER TICHBORNE passed a good deal of his time in Ireland in perfect idleness,

sometimes lying like a dog at the feet of Major JOCELYN. Imagine ROGER being told that he spent his time in that way. Wherever he went he moved in the best society, and he was a truthful, honourable gentleman, hating the kind of debauchery which had been attributed to him by the Defendant. Nothing could be more striking as a proof of ignorance on the part of the Defendant than the correspondence of ROGER. You have before you his genuine letters, and among the whole there is no letter to Miss DOUGHTY. The Defendant, when asked, "Did you ever write to Lady DOUGHTY?" replied, "I don't remember whether I did; I should think the probability is that I did. He gave the same reply when asked whether he wrote to Miss DOUGHTY. As regarded Lady DOUGHTY he said, "I don't recollect any particular letter." The man who does not know whether he wrote to Lady DOUGHTY or received letters from her cannot be ROGER TICHBORNE. It is impossible that ROGER could have forgotten that.*

[The Court then adjourned for lunch.]

After it had reassembled,

Mr. HAWKINS continued his review of ROGER TICHBORNE'S career, noticing the testimony of Mr. BURKE and Lord St. LAWRENCE. He proceeded: Gentlemen, you remember the miserable accident which happened to a man who at a party took a little too much to drink? ROGER TICHBORNE, writing afterwards to GOSFORD, said, "I shall never forget that." He (pointing to the Defendant) has forgotten it—(laughter)—just as if he had never heard it. (Renewed laughter.) Recollecting what occurred on that occasion, gentlemen, do you think anyone would have forgotten it? He professed to be perfectly familiar with the KELLETTS and the MORTONS, and addressed one of the former in the words, "How are you, DICK?" In a letter to Captain KELLETT he said nothing would give him greater pleasure than to see him "and talk over old times." "We have," he said, "succeeded in finding two of the men who was saved with me, and that will put an end to the Case." We have not seen the two men "who was saved" with him. (Laughter.) He did not see Captain KELLETT, as he desired, just then; but he wrote to him again, and the result was that in an interview he recognised Captain SANKEY as Major KELLETT. In a subsequent interview with Major KELLETT, he said, "I know you." Captain KELLETT said, "I suppose you do; who am I?" "Colonel BETTY," was the reply, the Colonel being an old Carabineer officer. Captain POLHILL-TURNER asked the Defendant, "Who am I?" and the Defendant said that he did not know. He makes SANKEY, KELLETT; KELLETT he makes BETTY; while POLHILL-TURNER he does not know at all—the man who actually invited him down, and whom he was going to see. You remember LOBB, the bootmaker, who produced one solitary boot. You remember the size of the leg. Nobody could forget it. And you remember that boot was sent back because it was too small in the calves for him. Now just see what KELLETT says. He says his legs were particularly thin, and his hunting boots were "miles too big for him."

Mr. Justice LUSH: The theory is that a very thin man will become very fat, and that a fat man will become thin.

Mr. HAWKINS: I stand corrected. By the same process of reasoning I may say that a thin boy will become a fat man, and it is also said that fat men are depraved. Then it follows, as a matter of course, that a good boy becomes a bad man—(laughter)—and a bad boy becomes a good man (renewed laughter)—and if you adopt that process of reasoning the Defendant is entitled to your verdict. I may now introduce the name of Miss HALES. Her name was only incidentally introduced by the Defendant for the purpose of fixing a date. He says that it was about July or August that he was paying his addresses to Miss HALES. He, when he was first asked about it, professed to have an objection to say, because "it would influence another party." Marvellously delicate when he is in a difficulty! He said he paid her visits, which continued till he left Canterbury, at the house of her mother and aunt. On re examination, he stated, for the purpose of giving substance and circumstance to his attentions to Miss HALES, that he used to stop and have a gossip with her while he kept the men waiting outside for an hour or so. Now, no man could fail to see that this must have been a deliberate falsehood. Just fancy a young officer daring to pull the men up outside a lady's door, and leave them outside while he goes in to chat with the lady. It is contradictory to common sense. Miss HALES saw the statement by this man that he had paid his addresses to her. She found it stated that ROGER TICHBORNE was in the habit of visiting her and keeping the troopers waiting outside her house,† upon which she communicated with her solicitor. All I can say is that I know not what entitles a Witness to credit if this lady is not entitled to it. There was no pretence for making an imputation upon the Crown or upon that lady that she stated what was falsely charged and wickedly charged to be a falsehood. Really, it scandalises me to hear these charges made without a shadow of foundation for them. Do let me call your attention to the pitiful excuse that the Defendant's Counsel tried to make for him. He assigns it to a habit of exaggeration "acquired from the bombastic Spaniards he had been associated with in South America." (Laughter.) His bombastic Spaniards of South America! I should have thought the Counsel for the Defendant had dwelt among the bombastic Spaniards of South America. I come now to deal with a matter which is not strictly in connection with ROGER TICHBORNE'S military life. It is the Brighton Card Case. I have only a few words to say on that, but those few words will be full of importance, because I find in this case another instance of foisting, knowingly foisting, perjured testimony upon you. The Case is mentioned in a letter to Lady TICHBORNE from the Defendant, written on the 17th of January, 1866, and was referred to in the Defendant's examination in chief by the Defendant's own Counsel, in which he says he went to Brighton in 1852, during leave of absence, and that he was there about three days. He lost about £1,800 in playing at cards, of which he says £500 was paid, and his mother got him the money. Then he goes on to speak of BROOME, ROBINSON, and ECCLESTON as being the men concerned in the transaction, and he accounts for his playing cards with strangers by saying he was a little the worse for liquor. He said the matter was hushed up, but it was a thing "generally known in our own circle." Now "in our own circle" it was not. It might have been in his own circle. Why even old Lady TICHBORNE seems to say he had better say nothing at all about that. Why? Well, because he might make a dreadful hash of his claim. Nobody had heard of it, and it was never suggested by Lady TICHBORNE. In cross-examination he says it was in 1852, in either the months of August, September, or October. He says he went there from Canterbury, by way of London. He thinks he remained a night in London, at St. James's-place. He went to the races at Brighton, and he says the money was lost in a room at the 'Bedford.' He was at Brighton for three days. He stayed at the 'Bedford.' Let us see how he disposes of his dates. We have Mr. WEATHERBY'S evidence that those races were held on the 4th, 5th, and 6th of August. Now, first, was JOHN BROOME there? At that time the Chief Constable of Brighton held a warrant for BROOME'S apprehension, who had been charged with some card proceedings in 1851. At the Summer Assizes JOHN BROOME ought to have taken his trial for defrauding a young man of the name of HAMP. The Chief Constable says that JOHN BROOME never made his appearance in Brighton. He could not have lived in the town and have been flaunting it at the 'Bedford' without the Constable discovering him. On the 3rd of August ROGER TICHBORNE wrote from Canterbury to GOSFORD, stating that he would not apply for leave of absence. On the 7th he wrote again from Canterbury, and on the 8th, stating what he had been doing, and what difficulty there was in getting a day's leave. Can you want anything more conclusive than the evidence to which I have called your attention? Now, however, with a boldness and an audacity for which I doubt whether you will find a parallel, the Defendant endeavours to show you that ROGER TICHBORNE was in communication with the BROOMES. The Defendant's Counsel finding that 1852 would not do, the Defendant says "I won't have dates. I want to ascertain the fact." Now let us see what was the fact he wanted. There is a man named BURNELL, who swears that in the autumn of 1850, between July and September, at JOHNNY BROOME'S house, the 'Rising Sun,' in Air-street, he saw ROGER TICHBORNE, who was called Captain TICHBORNE. He came, he said, in a low two-wheeled pony trap, drawn by a grey pony. He was dressed in ordinary clothes, he said, and he sat on the table and told JOHNNY that if he did not refund him the money he would take proceedings against him, and JOHNNY said that he would see the other men, and they would make it all right. And then this man went through the miserable farce of describing the person of ROGER TICHBORNE, and (turning towards the Defendant's Counsel), in which he was not checked, of professing to recognise the Defendant as the man who rode in the pony trap. Now, gentlemen, I confess with the knowledge we have of ROGER TICHBORNE during that autumn, and the whole time covered between the months of July and September, 1850, and that being so beyond all question—if ROGER TICHBORNE were of course this man, he would have known it—I confess that little surprised as I am at most things that have occurred, I declare I am yet surprised at the wickedness and audacity that is exhibited by putting that man in the box so deliberately to perjure himself. And they asked him moreover, when they got him, to identify the Defendant at a pigeon match, in 1870, or 1871. I must say that if they knew, as they must have known, where ROGER TICHBORNE was in 1850, they must also have known that the man who stood there and swore that he had seen ROGER TICHBORNE between July and September, 1850, at JOHNNY BROOME'S, was telling a deliberate falsehood,* I say there is nothing which to my mind an honourable man ought sooner to have done than to say to the Witness, "You shall not commit this crime in the presence of the Jury." They did; and to this hour the man's testimony has never been withdrawn. I declare, this is to my mind shocking and shameful.

The LORD CHIEF JUSTICE: There is another striking circumstance. The Defendant, in his cross-examination, said he did

* This statement was afterwards corrected by the Defendant in his cross-examination. COCKBURN, doubtless, knew this well, but did not—as he ought to have done—compel Mr. HAWKINS to state it.

† Miss HALES was clearly proved by the Witnesses for the Defence to have been "mistaken" on this point.

* The Witness, BURNELL, was no doubt mistaken in the date, but should his evidence have been rejected because of this?

not know JOHNNY BROOME during the time he was at Brighton.

Mr. HAWKINS: Yes, my lord. He knew HARRY, but not JOHNNY. I cannot understand, when they were so particular in calling their Witnesses from Poet's-corner, when they had Mr. HARCOURT and his son, and Mr. GUILDFORD ONSLOW and the two lad clerks to say that they had not talked about MARY ANN NEALE'S evidence to the Defendant—I wonder that they have not thought it necessary to give some explanation of this man's statement never being taken down till the day he went into the Witness-box. I don't like to say things which are unnecessarily hard, but I ask you fearlessly to say that they knew the man was perjured when he was giving his testimony, and I have done with the Brighton Card Case. I have now disposed of all the evidence, so far as I think necessary, regarding ROGER TICHBORNE'S life down to 1852. I have abstained from calling your attention at present to some portions of the year 1852 which are connected with his engagement with his cousin, Miss DOUGHTY, and to the occurrence during the early part of the year, because they form a separate chapter of this history. I don't propose to deal at any length with ROGER TICHBORNE'S preparations for his travelling, nor the leave-taking, nor do I mean to occupy your time by doing more than call your attention to the last dinner which his father gave, and at which ROGER was present. All these things are things which ROGER TICHBORNE never could have forgotten. The Defendant knew nothing of them; on the contrary, he seems to me to have ignored them. He denied the breakfast with CHATILLON. Do you believe Madame CHATILLON and M. CHATILLON, or the Defendant? If you believe the former, you will say that if the breakfast did occur that ROGER TICHBORNE never would have forgotten it. I pass over his hasty leave-taking at Knoyle. The Defendant knew nothing of ROGER'S arrival in town, which GOSFORD told us of, and his being too late for dinner. Just stop for a moment to recall your attention to what occurred at St. James's-place. The hurried call at the kitchen of the house because the parlour was engaged—the execution, first of all, under these circumstances, of a deed by way of security for the money raised for the purchase of his commission; and, secondly, the execution of a power of attorney empowering GOSFORD and SLAUGHTER to act for him whilst he was abroad. The Defendant was ignorant of all these matters, and had no recollection of any one of them having happened. We know that directly this was done they hurried off to the station. Mr. GOSFORD went as far as Winchester with him, where he got out, and ROGER TICHBORNE went on to Southampton alone and embarked on board that night. He then sent for the Rev. Mr. MOUNT, who visited him, and remained with him on board until the boat was ready to leave her moorings. Are these things which are likely to be forgotten? Let us see what the Defendant says about them. He says that GOSFORD met him at the station at Winchester; that he got out there and went to Brookwood; that he came back again to Winchester, and thence proceeded to Southampton. He says that before he left THOMPSON'S he saw Mr. HENRY DANBY SEYMOUR there, and he had to pay him £300, and that he paid it there, but he forgets whether he signed a document. He says he called on the Rev. Mr. MOUNT at Southampton in the morning, and walked the street with him, and in his affidavits he swore—what we know now to be conclusively false—that he had his portrait taken. Gentlemen, here is a string of perjuries which show the ignorance of the man. He did none of these things. Of the voyage in the 'Pauline' he knows nothing. He did not remember the vessel putting in to Falmouth after she left Havre; he forgot the incidents about the fishhook in the eye, and the other passengers who were always sea-sick. But four years afterwards he had all these things pat enough. He had then an opportunity of talking to MOORE about the passage and the fishhook; and there is a letter from ROGER TICHBORNE to his father, dated June 29, 1853, which mentions the fact of the vessel in which ROGER was putting into Falmouth. The fact was known to Lady TICHBORNE, and so might have reached the Defendant. As I have said, I don't undertake to tell you every one of the sources from which he got his information. It is enough for me to point out to you one or two sources, and you will have no hesitation in saying whether he availed himself of them or not.

[The Court adjourned at twenty minutes to four until half-past ten on Monday morning.]

DR. KENEALY AND MR. HAWKINS.

During the TICHBORNE Trial, while Dr. KENEALY was addressing the Jury and opening the Defence, he made a statement as to the evidence upon which Mr. HAWKINS started up and said "That is false." (See *Trial*, Vol. IV., p. 86.)

Dr. KENEALY made no observation at the time, expecting naturally that the Judges would interfere, in rebuke of an observation which was not only an insult to the Counsel, but a gross outrage on decency, and a gross insult on themselves, as representing Justice in the Court of Queen's Bench. During the adjournment for luncheon, Mr. MACMAHON and several other Counsel came to Dr. KENEALY and protested strongly against the use of such language. Dr. KENEALY, who had not really much cared about it at first, was urged by them to appeal to the Judges for a withdrawal of the words. Dr. KENEALY at first refused to take any step, but after considerable remonstrance, he consented to do so, not for his own sake, but for that of the dignity of the Court. He and Mr. MACMAHON proceeded to Master F. COCKBURN, and told this gentleman what had occurred. Master COCKBURN said he entirely agreed with the views of those gentlemen who had spoken to the Doctor, and promised to go straight to the Chief Justice and his brother Judges, who he had no doubt would call upon Mr. HAWKINS to withdraw and apologize for the language he had used. He left, and returned in about five or six minutes, saying that he had represented all to the Three Judges, who were at luncheon; that they had all said the language was unjustifiable and ought to be withdrawn, and that they would send for Mr. HAWKINS and communicate to him their views upon that point. Master COCKBURN said he had no doubt that on the resumption of the sitting a full apology would be made. The sitting was resumed, and no apology was made. When the Court adjourned, Dr. KENEALY and Mr. MACMAHON went to Master COCKBURN, and the Doctor, referring to what had taken place, said: "How is this?" Master COCKBURN answered, "It is not the fault of the Chief Justice or the Judges. Immediately after I left them, they told him what I had said on your behalf, they informed him that, in their opinion, he ought to withdraw the expression 'false,' and 'that he ought to do so at the re-assembling of the Court.' Mr. HAWKINS positively refused to do it, and the Chief Justice told me to tell you that he had no power to compel him to do so." Dr. KENEALY answered, "Well, then, tell the Chief Justice from me, that he must not be surprised if in all the subsequent proceedings in this Case I do not measure my words when I refer to Mr. HAWKINS." Master COCKBURN answered, "I don't wonder at it."

TICHBORNE LETTERS.

The reader is requested to compare the two letters that follow. The feelings of the Claimant on Christmas-day, 1873, are precisely like those described by the undoubted ROGER on Easter Sunday, 1841—

34, Bessboro'-street, S.W.: December 25th, 1873.

DEAR MADAM,—I have great pleasure in acknowledging the receipt of your letter, with the drawings enclosed. I do not remember having received any like them before—they certainly are very good. . . . I am spending my Christmas shut up in my office quite alone—not for want of some place to go to, for I have received many invitations to dine out, but I feel so miserable that I think I must make others feel so who have no cause. I sincerely hope— —and yourself have had a Merry Christmas, and I wish you a happy New Year.

I hope, as you suggest, that the new year will clear away some of the thick cloud which now hangs over me; but it is hard to battle with such superior forces, but still I do not fear the result.

Out of twelve Englishmen there must be some honest men amongst them, who have noticed the behaviour of some of the others, and the conduct of the Prosecution, which I should think was unparalleled.—Again thanking you, believe me, sincerely yours,

R. C. D. TICHBORNE.

Extract from a letter of Lady DOUGHTY'S:—

Tichborne Park, April 24th, 1841.

MY TRULY DEAR ROGER,—I see perfectly by your private letters the depressed, lonely feeling you had when you wrote. . . . . Never think you can tire me by writing, and would to Heaven that my poor prayers, and those far more worthy, may snatch your soul in spite of yourself from the dangerous path in which it is going. I see *you alone and sorrowful in your room*, when, as a Christian, you ought to feel joy on that glorious day—Easter Sunday. Till your mind and conscience are at ease, you cannot judge of life as you ought, &c., &c., &c.

ONE HUNDRED AND SIXTY-SIXTH DAY.—MONDAY, JANUARY 26TH, 1874.

The Trial at Bar of the Claimant for perjury was resumed at the Court of Queen's Bench, before the Lord Chief Justice, Mr. Justice MELLOR, and Mr. Justice LUSH.

On their lordships taking their seats at twenty minutes to eleven,

Dr. KENEALY said: I have been requested, my lord, to call your attention to a paragraph in the 'Western Mail,' which seems to me to be a very improper paragraph, and inserted evidently for the purpose of injuring the Defendant.

The LORD CHIEF JUSTICE: I do not know where this is to cease. I have seen in the report of the proceedings at the Police-Court observations made by Mr. E. T. LEWIS, upon the conduct of this Court, which are perfectly scandalous.

Dr. KENEALY: I am not answerable for that, my lord.

The LORD CHIEF JUSTICE: I know you are not, Dr. KENEALY. Do not understand me as in the slightest degree reflecting upon any one in connection with this Trial. I only advert to it as a most insolent piece of audacity on the part of the gentleman who made these observations. He had better mind what he is about; he is an Officer of this Court.

Dr. KENEALY: The paragraph to which I refer appears in the 'Western Mail' of Saturday, January 24th, and commences with an impertinent allusion to Mr. WHALLEY, to Mr. ONSLOW, and to your lordship, which I will not read, but I will read the latter portion of it:—"I can tell you for certain that a meeting of the Counsel for the Prosecution has been held, and it has

MR. HENRY HAWKINS, Q.C.

been decided that should the Jury disagree in their verdict, the Government will summon a fresh Jury, and prosecute the Claimant on one count of the present indictment—viz., the alleged assertion against Lady RADCLIFFE and the contents of the Sealed Packet. It is confidently asserted in Westminster Hall, however, that the Jury have agreed, and that they have been requested to abstain from stopping the Case by reason of the many points reserved."

Mr. HAWKINS: I can only say on the part of the Counsel for the Prosecution, that they are not aware of any such consultation. (A laugh.)

The LORD CHIEF JUSTICE (after looking at the paper): The paragraph you have read, Dr. KENEALY, is so utterly contemptible and so absurd that I really hardly think we need take notice of it.

Dr. KENEALY: Very well, my lord.

The LORD CHIEF JUSTICE: It is, however, exceedingly improper.

Mr. HAWKINS: I hope it will not be understood at all that there is any truth in it so far as the Treasury is concerned.

The LORD CHIEF JUSTICE: Oh, no!

The FOREMAN: Or so far as the Jury are concerned.

Mr. HAWKINS, resuming his address to the Jury, then said: Gentlemen, I think when we left off on Friday I had traced ROGER TICHBORNE down to his landing at Valparaiso. I propose now to travel through, as far as I think it necessary to do so, the life

of ROGER TICHBORNE in Chili, and then point out to you the different accounts which the Defendant has given of that life. It seems to me impossible to conceive anything more hopeless than the entanglement in which the Defendant's Counsel found himself involved when he came to discuss that portion of the life of ROGER TICHBORNE which he spent in Chili, and when he endeavoured to reconcile the Defendant's evidence upon that part of the Case, more particularly upon that part of the Case relating to the alleged visit of ROGER TICHBORNE to Melipilla, where, of course, I say ROGER TICHBORNE never was at all. As to the fact that the Defendant himself was in Melipilla there exists not a shadow of doubt; and the difference between his case and mine in that respect is this—that he says he was there as ROGER TICHBORNE, whereas I say ROGER TICHBORNE never was there, and that he was there as ARTHUR ORTON. Before I deal with what the Defendant has said upon this part of the Case, let me deal first of all with the unquestioned testimony afforded by the correspondence of ROGER TICHBORNE himself of his wanderings in South America, so far as it is necessary to trace them for the purpose of this inquiry. I will take, first of all, the letter of the 29th of June, 1853, addressed by ROGER TICHBORNE to his father, and I find that he arrived at Valparaiso upon the 19th of June, 1853. On the 30th of June he left Valparaiso with MOORE on an excursion to Santiago, about 75 miles off, stopping, as he states in his letter of the 25th of August to Lady TICHBORNE, and sleeping half-way on the road. That would be at a place called Casa Blanca. We find in the same letter a statement that on the 2nd of July he arrived at Santiago. At Santiago MOORE, who was then his servant, was taken ill, and he left MOORE there ill, and arranged to start on his return journey to Valparaiso on the morning of the 6th of July to catch the 'Pauline,' which was about to proceed to Arica. Now, there is a passage in this letter which you must put your own construction upon. I will tell you the construction I have put upon it. He says, "When I had settled all about him, I made my arrangements to start the next morning, as I was anxious to be in time for 'La Pauline,' which was lying at Valparaiso, and which was to sail shortly for Arica. When I arrived there"—I construe that to mean Valparaiso—"I found she would not sail so soon," and then he goes on to say, "I sailed from Valparaiso for Arica upon the 27th of July." You will find that neither in this letter, nor in any one of the letters written by ROGER TICHBORNE from South America, does the name of Melipilla once occur. I do not trouble you by going through now the details of the journey to Arica, whence, we know, he sent back, amongst other things to Mr. GOSFORD, a little skeleton. But we know he was actually back in Valparaiso upon the 20th of December, for you will find that stated in a letter to Lady DOUGHTY. He was then preparing to cross the Cordilleras as fast as he could for Buenos Ayres, and he states in his letter that he thought of remaining at Valparaiso about a week, which would bring him up to the 27th of December. On the 31st of December he was again for the second time at Santiago, where JOHN MOORE, his servant, was at that time residing. You will find that in a letter, dated the 31st, to Lady TICHBORNE, and written the day after he arrived at Santiago. Just let us see what the Defendant's account, first of all, is of ROGER TICHBORNE'S journey in South America; and it will be necessary to take the two accounts the Defendant has given—the first account, which he gave before he had the opportunity of getting accurate information upon the subject, and the second account, which he gave after the lapse of four or five years, when he had ample opportunity of making himself acquainted with the main leading outlines of that journey, bearing in mind always that there was an actual necessity for the Defendant, in some way or other to take ROGER TICHBORNE to Melipilla, because he had stated in his affidavit, "I assumed the name of THOMAS CASTRO after that of a friend Don THOMAS CASTRO, whose acquaintance I had made at Melipilla in July." Now, upon the 30th of July, 1867, when he was cross-examined by my friend Mr. CHAPMAN BARBER, at the Law Institute, you will find he gives this account of his journey. He is asked this question, "How long did you stay at Valparaiso?" He asks, "Do you mean the first time?" "Yes." And then he says, "About five weeks." "Where did you go from Valparaiso?" "I went to Callao." Not a word about Santiago. Gentlemen, it is quite impossible that ROGER TICHBORNE could have forgotten the fact that he had gone to Santiago; that at Santiago the servant he had brought out from England was taken so ill that he was unable to return with him; and that he had taken a man who could not speak his own language in place of MOORE. After mentioning the visit to Lima, he says he went back to Valparaiso and from there to Casa Blanca, and from Casa Blanca to Santiago, via Melipilla, and thence to Mendoza on the west side of the Cordilleras. So that you will see upon that examination he states that he had gone to Melipilla on his journey from Valparaiso to Santiago upon the occasion of his going to Santiago to cross the Cordilleras. Now we know perfectly well he alleges his stay there was three weeks, and we know perfectly well, taking the dates of ROGER TICHBORNE'S own letters, he could not have been three days on the road at all. We know very well that ROGER TICHBORNE did ride as fast as man could ride from Valparaiso to Santiago upon that occasion, making no stay at all upon the road, so that for ROGER TICHBORNE to have done what the Defendant in his cross-examination in the month of July, 1867, said he had done, was a matter of absolute impossibility. Now, before the Defendant was examined on the Trial of the late ejectment suit, four years had elapsed since his examination at the Law Institute, and, of course, he had ample opportunity of discovering in the meantime that he had made a grievous error, or rather two grievous errors. The first was, in stating that he had in the first instance, stayed five weeks at Valparaiso; and the second was, in stating that, when he went from Valparaiso to Santiago for the purpose of commencing his journey across the Cordilleras, he had stayed at Melipilla, for all the correspondence put in evidence showed that ROGER TICHBORNE made no such stay at all. Still there remained the necessity for fixing some stay at Melipilla, for he had in his affidavit sworn it was at Melipilla he stayed and met with TOMAS CASTRO, whose name he took. So that he was in this difficulty. He had unquestionably given a false account of the stay at Melipilla on his journey between Valparaiso and Santiago, and there was the difficulty then of knowing where to bring in this visit to Melipilla, and there remained only one journey during which he could put it in—that was the journey on his return from Santiago to Valparaiso before he joined the 'Pauline' to proceed upon his travels to Arica and the North Western Coast of South America, and he was able to fix on that because, as he saw from the dates, there was a period of some 18 or 19 days between the 6th of July, when ROGER TICHBORNE left Santiago, and the 26th or 27th of July, when the 'Pauline' proceeded on her northern journey. Accordingly, at the Trial in 1871, a very different story is told from that which was told in 1867. This is the story told in 1871. He says that on his arrival at Valparaiso he made a stay of seven or eight weeks in and about Valparaiso. He says he made a visit then to Santiago with MOORE, remaining eight or nine days, and returning alone by the Melipilla road, via San Francisco, and proceeding on to Melipilla, where he had intended to stay only a few days, but where he stayed over a fortnight, because he learned the ship did not sail so soon as was expected, and he learned that from the Captain of the 'Pauline,' in answer to a letter which he had sent to him. We have no such letter as that, nor has any attempt been made to prove anything from the Captain of the 'Pauline.' The letter to Lady TICHBORNE would lead unquestionably to the inference that ROGER TICHBORNE did not ascertain that the 'Pauline' was going to be delayed upon her voyage until after his arrival at Valparaiso, and then he found she was delayed a few days. The Defendant is cross-examined with reference to these conflicting statements and asked to explain, and in vain does he endeavour to do so. In fact, he can afford no explanation of the matter at all. Now, gentlemen, I say that the difference between these two accounts is accounted for in this way. Upon the first occasion the Defendant was unaware what ROGER TICHBORNE'S movements really had been. He had not then had the advantage of any conversation with MOORE, or of eliciting from MOORE any facts relating to ROGER TICHBORNE'S real journey, and therefore it was he fixed the visit to Melipilla at an impossible time. Four years after he had had that opportunity, MOORE being examined by the Defendant's own Counsel, and that is the reason for the shifting of the period of this visit. But against the direct statement of the Defendant that ROGER TICHBORNE stayed at Melipilla for a fortnight, we have, first of all, the absence of all mention by ROGER TICHBORNE in his correspondence of Melipilla or of the name of one single person residing in that district; we have, secondly, the letter to Lady TICHBORNE, in which he says he did not receive tidings of the delay of the 'Pauline' until he had arrived "there," which I construe to be Valparaiso; thirdly, we have the positive oath of Mrs. HAYLEY that no ROGER TICHBORNE ever stayed at Melipilla at all, and she is confirmed by the whole tenour of the CASTRO correspondence; and fourthly, it strikes me that this stay at Melipilla of ROGER TICHBORNE is answered by the absurdity of supposing that ROGER TICHBORNE, who knew not one word of Spanish, should stay for a whole fortnight shooting in a country *where Mr. Purcell says there was no game.*

The LORD CHIEF JUSTICE: *He said that there were hundreds of partridges, and that you might knock them down with a stick.*

Mr. HAWKINS: *Well, there were a few red-legged partridges running about*, but it seems odd that ROGER TICHBORNE should make a fortnight's stay to shoot red-legged partridges with people who spoke no English and no French, and that in so short a space of time he should have formed such close friendships as the Defendant formed, and which he wrote about in his CASTRO correspondence. You have got four strong reasons, in my mind, apart from the contradictions given by the Defendant himself, for believing that ROGER TICHBORNE never was at Melipilla at all. Moreover, if ROGER TICHBORNE did go to Melipilla and stay there, it is very odd that he never should have mentioned such a thing as that to MOORE, or in one of the letters he afterwards addressed to Lady DOUGHTY, to his mother, to Mr. GOSFORD, and to Mrs. SEYMOUR. Well, having been involved in these difficulties from the Defendant's own counter-statements, I thought at one time the Defendant's Counsel was about to suggest that there might have been a special visit paid, and I rather think it was half-suggested; but there was a difficulty in fitting it in. There was a suggestion that the visit had been not on the occasion of a journey to or from Santiago, but a special visit made from Valparaiso; but even the Defendant had never suggested that, and I need not, therefore, trouble you about that. I may remind you here of what his Counsel said—"I can understand a good-natured fellow like ROGER TICHBORNE, with

his sweet, easy-tempered mind, making himself popular at Melipilla." But when he said that I think he must have forgotten that this was the same man whom he had been describing as "a degraded sot," and as being the possessor of "a debased and rotten mind." But, apart from this, I must say that there was a boldness about the Defendant's Counsel taunting me with not calling MOORE to prove my Case. They called MOORE themselves upon the last occasion, and after his examination the Defendant himself was examined. MOORE was called for the purpose of proving the Defendant was ROGER TICHBORNE, his young master. *

The LORD CHIEF JUSTICE: Does that appear anywhere?

Mr. HAWKINS: I don't find it in so many words, but this is what I do find in the re-examination of the Defendant by Mr. Serjeant BALLANTINE:—"We have heard, first of all, from MOORE, who accompanied you, and also from yourself—from MOORE we have heard of one accident, and from yourself of another."

Mr. Justice MELLOR: That is not evidence of the fact.

Mr. HAWKINS: It is evidence of the fact that MOORE had been examined at that time on the part of the Defendant. I know there is no direct evidence to be found in the Defendant's cross-examination or re-examination to this extent that MOORE was called for the purpose of identifying him, but when you take into consideration the fact that MOORE was ROGER TICHBORNE'S servant, and that he was put into the box by the Defendant, you may draw your own inference as to why he was called. But I find here another little contradiction. The Defendant stated at first that when he left MOORE ill at Santiago, he returned alone. Four years afterwards, when the Defendant had the fact that ROGER TICHBORNE did not return alone, the Defendant said he was accompanied by a Chilian servant, hired at Santiago, for the occasion. My argument is that, inasmuch as MOORE was ROGER TICHBORNE'S servant, and inasmuch as the Defendant, asserting himself to be ROGER TICHBORNE, put MOORE into the Witness-box, you may infer the reason why he was called. Why is it they do not call MOORE now? And where is the validity or strength of the taunt they threw out against me for not calling him? Would MOORE be really a valuable Witness on the part of the Prosecution, after he had been called once on the part of the Defendant? His evidence would naturally enough in your mind be neutralised on his being asked what he had said before. Why did not the Defendant call him? If the Defendant were ROGER TICHBORNE, MOORE had no object in denying his young master. The notion is ridiculous that MOORE had been tampered with by the Crown. It is easy to state it; but it is not true. There is not a shadow of justification for such an insinuation. On the contrary, we know they had sufficient control over MOORE to bring him into Court to be identified by Mr. BINGLEY, and what was the object of doing that except for the purpose of following it up by putting MOORE into the box? Why they should not call him if he can adhere to the story that they wanted him to tell, that this Defendant was ROGER TICHBORNE, I cannot conceive. Mr. BINGLEY was called to prove that the Defendant was the young man he saw at Santiago in 1854. Mr. BINGLEY says he remembers the general expression of the face, but has no recollection of a single feature; and when shown the daguerreotypes taken at Santiago, he said that even then he could not bring to mind a single feature of ROGER TICHBORNE. What is the value of testimony like that, when it is not fortified and corroborated by the testimony of the man who knew ROGER TICHBORNE better than anyone else—I mean MOORE? Mr. BINGLEY was evidently very much impressed by the Defendant recalling the names of BARRINGTON, HELSBY, and other persons, and also by his asking about a variety of places in Santiago, which, of course, he could very well do, because there was no lack of geographical books and gazetteers to give plenty of information on the subject; and as regards the names of people, of course in 1868 MOORE had been seen, and there was the opportunity of getting from him the information which would enable him to hold a *prima facie* satisfactory conversation with Mr. BINGLEY. Mr. BINGLEY is the gentleman who was used for the purpose of communicating with persons in Chili, and showing them affidavits on behalf of the Claimant. We have now got ROGER TICHBORNE at Santiago on the second occasion, and we have also got the Defendant's ignorance of the photographs. The journey across the Cordilleras was marked by an incident not likely to have been forgotten—the falling of a mule over a precipice. The Defendant gave that wrongly; for he said it happened in going over the second chain, whereas we know it took place in crossing the first. He stated in his cross-examination that he wrote to Lady TICHBORNE and to Mrs. SEYMOUR the same account, and that he copied it from his diary.

The LORD CHIEF JUSTICE: ROGER in the last letter that we have had says that he has not time to send an account of the accident from his diary, but that he will do so. The letter thus promised has not been put in.

Mr. HAWKINS: The Defendant got hold of the story of the mule, but he was ignorant of the locality where it occurred. Again, if Mr. GOSFORD speaks truly, the Defendant was in January, 1867, grossly ignorant respecting MOORE. He said that ROGER left MOORE at Santiago, whereas we know that he left him in Monte Video. He never mentioned the memorable ride over the Pampas, or a number of things which he sent to Mr. GOSFORD, including a little skeleton in a glass case. In every part of ROGER'S life in South America the Defendant was wrong. More complete ignorance it is impossible to conceive. The story of ROGER'S life in Rio may be collected from the evidence of Captain OATES. From that it appears that he went to Rio *en route* for Kingston with the view of returning to England. Sir JAMES TICHBORNE stated to ALFRED BRAND, the gamekeeper, that he had received a letter from ROGER, in which he said that he was on his way home. BRAND stated that in his evidence that Sir JAMES showed him that letter and read it to him. That ROGER intended to return is quite certain from a letter of his to Mr. GOSFORD, it being his intention to return to England by way of Kingston and New York. At Rio he found the 'Bella,' Captain BIRKETT, about to sail for New York. Captain OATES was charged with being a hireling in consequence of his having received an appointment from Mr. CHICHESTER FORTESCUE.

The LORD CHIEF JUSTICE: I have received a letter from Mr. CHICHESTER FORTESCUE declaring that at the time when Captain OATES was appointed one of the Assessors of the Board of Trade he did not even know that he was a Witness in this Case.

Mr. HAWKINS: I do think that to make such imputations is scandalous. Mr. CHICHESTER FORTESCUE has had nothing to do with the case.

The LORD CHIEF JUSTICE: Mr. CHICHESTER FORTESCUE asked me whether I was of opinion that he should take any notice of the imputation which had been cast upon him, and my reply was his character was much too high for that to be necessary.

Mr. Justice LUSH: *It is only one of a great number of such imputations which have been thrown broadcast.*

Mr. HAWKINS: Yes. Mr. CHILDERS did not escape. Gentlemen, knowing the high character of Mr. CHICHESTER FORTESCUE, and I think I may say considering your knowledge of him, I can afford to treat these imputations with the utmost contempt. You will judge of them, I think, as they ought to be judged. Captain OATES says that ROGER TICHBORNE desired to take a passage in the 'Bella,' and that being short of money he applied for credit. The vessel was obliged to remain a few days at Rio, and Captain OATES says he saw ROGER during that time at FOX'S store. There was no intimacy formed between them, but Captain OATES knew ROGER as a young gentleman who had taken a passage in the 'Bella.' Captain HOSKINS says that he saw ROGER walking a little unsteadily, but not in such a state as was described by Captain BROWN and the Defendant himself. The life of ROGER as told by Captain BROWN is simply a fabrication. He depicted ROGER as being on one occasion in such a state of helplessness that he was unable to walk from a billiard-room to his hotel, a distance of a few yards, and he said that he took him in consequence to his own room, where, as he was taking a bath, he saw a brown mark on his side, and also one on the left arm, which I say must have been "A. O." There was another peculiar mark, but as Dr. WILSON had not stated what it was, BROWN could not mention it. Captain BROWN spoke of Captain BIRKETT and Captain OATES as being the companions of ROGER in the orgies which he described; but I have searched in vain for any evidence of that besides Captain BROWN'S own statement. He said that during his nine days' stay at Rio ROGER got a letter of credit for £200, and spent the principal part of that amount in drinking, one of his chief drinks being a kind of white rum, which he (ROGER) certainly never took. He also swore that for two whole days ROGER was intoxicated * at his hotel, and allnded to the Vice-Consul at Rio, Mr. HOLLISCOMBE, in connection with that. Mr. HOLLISCOMBE was not called to corroborate that statement.

A JUROR: Is there any evidence as to the places and times ROGER TICHBORNE took up any money in South America?

Mr. HAWKINS: We had Messrs. GLYNN'S clerk, and he stated that there was a credit of £2,000, for three years; and then that in 1854 he drew £120 at Santiago, £100 at Buenos Ayres, and £100 at Monte Video. There is no trace of any cheque for £200 at Rio. CLINE, one of the Defendant's own Witnesses, who was steward under Captain OATES, says that he knew ROGER, but never saw him intoxicated, only "merry like," that is in the kind of state described by Captain OATES as that of a man who had been taking a parting glass. The Defendant said in his evidence that in 1854 he knew at Rio, not FOX, who kept the store, but Mr. COX, a large supplier of ships, Mr. BENNETT, and a Mr. DOUGALL. Not one of these persons has been found to corroborate his story, and

* JOHN MOORE was examined at the first Trial, and swore positively that the Claimant was ROGER TICHBORNE or the Devil himself; he did not appear at the second Trial, but was met in Westminster whilst the Trial was going on, by Mr. WILLIAM BAILEY, proprietor of the 'Anchor Inn,' Ropley, Hants, who said to him, "MOORE, how is it that you have not been in the box?" The reply was, "*Because I prefer to serve my own interests.*" Mr. TALBOT, nephew of Lady DOUGHTY and cousin of Lady RADCLIFFE, who swore against the Defendant on June 18th, 1873, admitted in cross-examination that he had kept JOHN MOORE in his service for over two years. It is not surprising after this that MOORE was not called at the second Trial, as the Witness for the Defendant.

* Captain HOSKINS' evidence in Vol. VI., page 376-378, which clearly proves that ROGER TICHBORNE was drunk at Rio, corroborates the Claimant's statement, and Captain BROWN'S testimony.

I believe the reason is, that no such persons existed, the Defendant confounding "COX" with "FOX," and "BENNETT" with "BENETON." It is very odd that, if he recollected persons with whom he had very little to do, he never recollected his affectionate old friend Captain BROWN, or the little bed belonging to him on which he slept. BROWN says that OATES and ROGER TICHBORNE were on the most intimate terms, and getting drunk together for days. The Defendant swore that he had no knowledge or recollection of any such person as Captain OATES. In the whole of the correspondence of ROGER there is no trace of his having led a life of drunkenness at Rio. All his letters were written in the same strain, and there is nothing to justify a suspicion of such conduct. Captain BROWN'S evidence was absolutely destroyed by what he said about seeing the brown mark. [Here the learned Counsel described the relative position of Captain BROWN and ROGER as explained by the former when ROGER was in the bath.] I contend that his seeing the mark was, under the circumstances, impossible.

A JUROR: Would not that depend on his position?

Mr. HAWKINS: I will make a little bath for him. [The learned Counsel again entered into the question of relative position.] If the Witness saw the brown mark at all, he must either have seen through the bath or seen through the man. The other mark which he professes to have seen is that on the thumb, and that must be a fabrication. The arrangements for ROGER'S passage to Kingston having been made, there arose the difficulty about the passport—a document without which no one could leave the port. The passport could not be obtained in time. In order to overcome this obstacle it was necessary to stow away ROGER in the hold. Captain OATES says that Captain BIRKETT and he supped with ROGER on board the 'Bella' the night before she sailed, and that it was arranged between them that he should sleep in the lazarette. ROGER went down to the lazarette, in the presence of OATES, BIRKETT, and the steward, and after he had been stowed away the vessel went some distance. A Custom House Officer then visited her, and took a cup of coffee over the hatch which concealed ROGER. The tug-boat afterwards towed the vessel out, and then parted with the 'Bella,' and from that hour the 'Bella' was never seen. As regards Captain BROWN'S perjured testimony, I use it to show that the Defendant adopted it. If Captain BROWN knew ROGER he knew all that I have mentioned, including the fact that both Captain OATES and Captain BIRKETT were perfectly sober when the vessel was leaving, and that Captain OATES was acting as a captain should do under such circumstances. Now, take what the Defendant says on this subject. In July, 1867, he treats the matter as if he had gone to Captain OATES without any concealment. No one would have supposed from his statement then that ROGER was stowed away. If he had known that, his shrewd attorney, Mr. JOHN HOLMES, would no doubt have suggested to him to put it in his affidavit. The story which OATES afterwards told was a very awkward one. The Defendant, adopting it, gave the circumstances of the stowing away, but he denied that he went on board the 'Bella' the day before she sailed. He described his condition on going on board as one of intoxication, and said he was never upon deck till the 'Bella' was going down. Captain BROWN said that on the morning on which the 'Bella' sailed he went on board at five o'clock, with Captain BIRKETT, Captain OATES, and Captain HOSKINS, and that they were all drunk. There is overwhelming evidence that that story is false. The Defendant repeated it. This Witness further says that the whole crew being drunk, as well as the three captains, Captain BIRKETT asked him to stow ROGER away, and that he placed him behind one of the cabin partitions. While he was doing the carpenter's work, OATES and BIRKETT were, according to BROWN, pummelling the steward to compel him to make some coffee; and it was while matters were in that position that the custom-house officers came on board. Captains OATES and HOSKINS have stamped BROWN as a deliberate perjurer, and the Defendant has adopted his account. Captain BIRKETT, being dead, could not defend himself, but his old employers were alive to vindicate his character.

The LORD CHIEF JUSTICE: It was suggested that he scuttled the ship.

Mr. HAWKINS: Yes, and that shows the straits to which the other side have been driven. [The learned Counsel then read the account, given in LLOYD'S books of the loss of the 'Bella,' and the pieces of wreck picked up, which appears in Vol III., page 151.] That this vessel was the 'Bella' no human being can doubt. How she was lost does not much signify; but anything more wickedly infamous than the suggestion that she had been wilfully overloaded and scuttled cannot be conceived.

The LORD CHIEF JUSTICE: That was opposed to the whole course of the evidence up to a certain point, which was that the vessel sprang a leak from natural causes. It was after that that the Defendant's Counsel suggested that the 'Bella' sprang a leak.

Mr. HAWKINS: It was a scandalous invention. Gentlemen, you have heard of the instructions to "abuse the Plaintiff's Attorney." Here the instructions would appear to have been in effect, "Take up your dirty brush, and bedaub with foul, diabolical suspicions every one opposed to our Cause." Aspersions like these, however, must recoil on the heads of those who make them. I say that from the hour when the 'Bella' left Rio we have no authentic trace of ROGER TICHBORNE. From that time you have nothing but a perjured tale of a life which terminated with such a sad catastrophe. With that catastrophe I must now proceed to deal. The Defendant has sworn that he and several others left the 'Bella' in the open boat, and that soon after that she went down. [The learned Counsel then read part of the Defendant's evidence on this subject.] His story about losing a letter of credit for £300 in the 'Bella' is a simple invention. There was no letter at all for that amount. His story in his evidence about the sinking is not quite that which he told Mr. WALTHEW in 1868. He first said that the mate came to the Captain and told him the vessel was leaking; his second story was that the Captain himself first looked over the side and found that she was sinking. When asked to tell what happened about the wreck, the Defendant said, "I came up after breakfast. The vessel was leaning like this (describing it). One of the seamen told the Captain the ship looked very low; the Captain ordered the pumps to be tried and ascertained that there was water—I think 12 feet." He went on to say that the Captain ordered two boats to be cleared, and that water and provisions were put in the largest boat. The large boat, he said, was put in the sea, but he was in the smaller one, which contained eight of the crew and himself. Gentlemen, I call your attention to that statement that there were nine persons. The Captain and the mate, with the compasses and provisions were, according to his account, in the large boat, well supplied with food, while nine persons were in the small boat without any provisions. Would the crew have consented to be left without provisions? An hour after they got into the boats the 'Bella,' he said, went down, and all day and night the small boat pulled after the large one. When asked how the people in the small boat got water and provisions, he said, that night and morning they drew up to the large boat. It was, I suppose, a sort of nautical picnic. (Laughter.) When they got hungry or thirsty they pulled up to the large boat for refreshments. (Laughter.) In what he said about their pulling after another vessel LUIE'S instructions might be traced. According to the Defendant's own account, after the rescue he was not insensible at first. He was under the impression that the rescuing vessel was an American, larger than the 'Bella.' He arrived at Melbourne towards the latter end of July, about the 23rd or 24th, and he was under the impression that the vessel that took him there was the 'Osprey,' and that the Captain's name was LEWIS or LUIE. This vessel, he said, was a three-masted one, and had yards to all her masts, and the men who were rescued with him were all on board when he left her. With reference to the names of the crew, the Defendant stated, in his cross-examination before Mr. ROUPELL, that he did not remember any of them; that he went himself by the name of TICHBORNE, and was treated as such; and that he lived with the Captain when he was able to "go to table." Is it credible that a man picked up at sea, and three months on board the vessel, should never have asked the Captain where he was going? Yet the Defendant says he did not. He stated that there were eight or nine passengers on board the 'Osprey'; and he did not know whether he paid the Captain anything or not, but he had some recollection of giving him a cheque or blank paper. You will remember that there was no trace of that cheque; but if it had ever been given it would have been presented, and it would have filled the family with joy. The story is a pure invention, probably suggested by the cheque that was picked up in the 'Themis.'

The LORD CHIEF JUSTICE: *The story of the cheque is too absurd, because, as you say, if it had ever been given it would have been presented, and would have been a cause of joy to the whole family;* but I do not think the cheque found on board the 'Themis' could have suggested the idea, for it was not found till July, 1868, and the story had been talked about in 1867.

Mr. HAWKINS: I may be wrong about that, but the Defendant says he was not asked to attest any entry in the 'Osprey's' log of the picking up of the boat. Is it possible that any human being can suppose that there would not be an entry in the log, and that the Defendant would have had it read to him, and would have been asked to sign it? The Defendant's story stands absolutely by itself. It is not even supported by LUIE or BROWN; and it is on the face of it stamped with the grossest impossibility—so much so, that even his bold Counsel was obliged to throw it over, and say that it was marked with wild and reckless absurdity; that his client talked at random; and that you must not mind him. I quite agree with the learned gentleman, except, in so far as it is necessary to stamp the Defendant's statements with the charge of deliberate perjury. Look at the story as he tells it. He says that the vessel was rapidly sinking, and that she had twelve feet of water in her hold; yet that the Captain was not aware of the fact till he was told by a common sailor that he thought she was rather low. Then the boats were deliberately emptied of what was in them, and they were neatly packed with provisions and compasses before they were lowered. One cannot help laughing at the tale; it is really so absurd. Everything, we are told, was put in one boat. Now, do they think that the mate would have been allowed to go in her, and to leave the little one which was dependent for its very existence upon its ability to pull up to the long-boat every morning for provisions? As for the subsequent history of the shipwrecked sailors, you may find it in 'Robinson Crusoe'——

The LORD CHIEF JUSTICE: *I do not think you would find in* 'Robinson Crusoe' *that all the necessaries were put into one boat, and another left absolutely without provisions.* (A laugh.)

Mr. HAWKINS: No, my lord; but excepting that, I suppose you would find in any little nautical library an account as graphic or more graphic than that which the Defendant tells. Look at it as it stands. There are eight men and himself picked up at sea, taken on board a vessel on which there are twenty men of the crew and eight passengers, all of whom must, of course, be well aware of the circumstance; and is it possible that for twenty years there should be no trace of such a rescue as that? No one of the 'Bella's' crew ever heard of; no one found who had ever had any tidings of any one of them? Any scrap of a letter from any one of them would have sufficed.

Mr. Justice LUSH: Some of the men of the 'Bella,' we were told, had families.

Mr. HAWKINS: Precisely so, my lord, and the owners aettled with them for the arrears of their pay; besides which there were the twenty men of the 'Osprey,' and the eight passengers, all of whom, according to the Defendant's account, spoke English. In all there were aix-and-thirty persons who had utterly disappeared and left not a trace behind.* Why if eight men had been picked up after having been tossed about on the open sea for four days, one of them being a young gentleman on his travels, the circumstance would have been the topic of conversation everywhere. The story is impossible, and it is absolutely without confirmation, though Lady TICHBORNE had been advertising far and wide for information. It was not even supported by an assent of the Defendant himself till 1865, when he set up this iniquitous claim.

[Before rising for lunch, Mr. HAWKINS asked permission to adjourn at three in order that his learned friends might be present at the leave-taking of Baron MARTIN, to whom they were all warmly and affectionately attached. The learned Counsel having stated that he should certainly conclude on Wedneaday, and that he could not finish that day even if the Court sat the usual time, the Lord Chief Justice at once acceded to his request. On reassembling, the learned Judge announced that the Court would not sit on Thursday week, a member of the Jury having a domestic engagement on that day; but that if it was convenient they might sit on the Saturday following.]

Mr. HAWKINS (resuming) said: I was calling your attention to the absence of any confirmation of the Defendant's atory till the 14th of October, when JEAN LUIE was presented before you in the Witness-box. After three months' careful seclusion in the house of a paid agent of the Defendant, he was brought forward to tell his perjured tale—a tale which, if such a thing were possible, would be still more incredible than the Defendant's. If I had had any reason to suppose that the Defendant was not cognisant of the falsehood of that story, I should have felt it my duty to take no further notice of it, and should have entreated you not to permit LUIE'S crime to prejudice him. But, looking at all the circumstances of the Case, I cannot help coming to the conclusion not only that LUIE'S tale waa perjured, but that the Defendant at least—I care not to enquire what others knew—that the Defendant at least knew that it was false. In the first place, contrast the two accounts. LUIE states that when he washed the Defendant all over he complained that his crooked finger had hurt him. Then he mentions seeing the two olive marks upon him. Is it not strange that he did not see that other mark tuat was spoken to by Dr. WILSON? Being asked how the Defendant employed himself, he said he did nothing but pick oakum—how should LUIE know anything about picking oakum—(great laughter)—he did nothing but pick oakum and read the 'Garden of the Soul.' (Laughter.)

The FOREMAN: He also cut a stick.

Mr. HAWKINS: Yea; he cut his stick—(laughter)—well, a stick. And then he says he made him drunk, in order to send him to sleep. He states that the Defendant called the captain "the old man," and that there was no one on board named LEWIS OWEN or OWEN LEWIS. The time at which the 'Osprey' reached Australia is fixed with precision—in July 1854; the very time when LUIE was in Hull. The Defendant must therefore have known that LUIE was telling a deliberate falsehood. The Defendant said there were passengers which LUIE denies. Now, if LUIE had said there were passengers, and the Defendant had said there were none, there would have been just this possibility of excuse for the Defendant. He might have said, or his Counsel might have said for him, "Oh, the man was delirious; hia memory was affected; he forgeta things." But he does remember the passengers. LUIE says that at a distance of 400 or 500 miles from the Brazilian coast they picked up the boat. Now that is absolutely impossible. We have got it as a fact that the 'Bella' went down in the latitude and longitude I gave you, which is just 150 miles from the Brazil coast. Now, the difference between 150 miles and 400 would be 250 miles. How could that little boat, with those shipwrecked sailors, exhausted by fasting, have travelled 250 miles in the space of three days? It is absolutely impossible. Now, LUIE says the boat put up a spar with a red shirt upon it, and they permit him to swear that when the red signal was put up there were but two heads discernible. The Defendant says the men in the boat were rowing, and he himself was baling out water, and continued to do ao until after the signal was hoisted, for he said he saw the signal from what he called the 'Osprey,' and only became delirious after he was taken on board. LUIE says there were two paddling and four others, including the Defendant, lying crossways underneath the seats. What has become of the three other persons? If the Defendant intended to rely upon his story that there were eight of the crew in the boat beside himself, when LUIE said there were only six, he must have known that LUIE was lying. LUIE says they arrived in the early part of July. The Defendant fixed it as the 23rd or 24th, for reasons which I shall give you hereafter. LUIE says that he amused himself with picking oakum and reading the 'Garden of the Soul.' There is not one word in the Defendant's story to corroborate that. He says the Defendant never dined at the captain's table, and the Defendant says he did dine at the captain's table. The Defendant says the name of the captain was LEWIS OWEN, or OWEN LEWIS, and LUIE says there was no such name on board. LUIE says he used to speak of the captain as the "old man," but the Defendant said he knew the captain's name, and never called him "old man." He also says he knew LUIE'S name. LUIE then goes on to say that he could call him what he liked, and that he called him "ROGERS." The Defendant says he was known by the name of ROGER TICHBORNE, and by that name only. LUIE says the Defendant told him nothing of himself, and that he (LUIE) suspected him to be a runaway bankrupt. The Defendant says he was known on board the vessel as a young English gentleman, and was treated as such. Let me call your attention to LUIE'S description of their arrival at Melbourne. He says that on their arrival at Williamstown early in the morning, at about eight o'clock, the captain and the pilot and four of the 'Osprey' crew went ashore; and afterwards, in the course of the same day, he (LUIE) and the Defendant, with two of the 'Bella's 'crew named JARVIS and LEWIS, and two of the 'Osprey's' crew named MACARTY and ANDERSON, went on shore in the 'Bella's' boat, the Defendant having denied that the boat was brought into Melbourne at all. LUIE says they rowed up the Yarrow and then left the boat to take its chance, and that they arrived at Ballarat somewhere in the course of a week. When those names were mentioned the Defendant must have known that they were false, because he had got a list of the 'Bella's' crew, and Mr. KILLEY has told us that no such names were in the crew at all.* I have a letter which was written by the hand of HOPKINS at the Defendant's dictation, and in that letter the names of JARVIS and LEWIS nowhere appear, although the Defendant professes to remember the names of the crew. So much for the actual contradictions in the story itself. I propose now to call your attention to the extraordinary circumstances under which LUIE himself was introduced to Mr. WHALLEY and Mr. O'BRIEN, and I shall show from what took place at their original meeting that the Defendant was cognisant of the perjury, and was a suborner of the evidence. Then I must call your attention to the extraordinary and unaccountable conduct of those who had the conduct of this Defence, and others whom I do not now charge. But as regards the Defendant, I will undertake to show you that he was a suborner of perjury in this Case, and if so, I have his own Counsel's statement as to what will be the inevitable result.

[The Court adjourned at ten minutes to three.]

There was no crowd outside the Court.

* That none of the survivors of the 'Bella' nor any of the sailors of the 'Osprey' have turned up is not to be wondered at considering that nearly twenty years have elapsed since the 'Bella' set sail on her last perilous voyage—twenty troubled years in Australian life. That the Government should have had to pay thousands of pounds for Australian Witnesses, and should have only got at these through expensive Commissions is, at least, a mitigating element in the question. Mr. HAWKINS failed to notice that ARTHUR ORTON sailed to Valparaiso in the 'Ocean;' returned to England in the 'Jessie Miller;' and again left for Hobart Town in the 'Middleton.' The united crews of these three ships numbered as many as the single ship 'Osprey,' if not more, and yet, after all the expense and trouble gone to by the Prosecution, only two men—the black cook of the 'Middleton,' and the mate of the 'Pauline'—have turned up, so that there is nothing wonderful in the fact that none of the crew of the 'Osprey' have made their appearance. It is very doubtful also whether sailors are very diligent observers of what is going on at Westminster Hall among the land sharks; or that Newspapers in the English language circulate or penetrate to the cockpits of our Mercantile Marine.

* The name of HENDERSON appears, Vol. II., p. 398.

ONE HUNDRED AND SIXTY-SEVENTH DAY.—TUESDAY, JANUARY 27TH, 1874.

The Trial at Bar of the Claimant was resumed before Lord Chief Justice COCKBURN, Mr. Justice MELLOR, and Mr. Justice LUSH.

Mr. HAWKINS, Q.C. (continuing his reply), said: Gentlemen, yesterday afternoon, when we rose, I had promised you I would satisfy you—unless you are already satisfied, and I cannot help feeling that you are—that the story of LUIE, perjured as it was, was well known to the Defendant at the time he went into the Witness-box. But before I proceed to do so, I wish to call your attention to a most important matter in the story which LUIE tells, for it strikes me that this matter, unexplained, throws a great deal of grave suspicion over the conduct of more persons than one. LUIE says that at Ballarat he met with a man named CHARLES JANES; that JANES stayed with him at Ballarat a long time; and that JANES knew as well as he about the men JARVIS and LEWIS, two of the crew of the 'Bella,' and ANDERSON and M'CARTHY, two of the 'Osprey' crew, who, according to LUIE, had accompanied him from Melbourne to the diggings at Ballarat. As showing how absolutely false LUIE must have known that part of the story to be, I may here remind you that there were no such persons. In reply to the Lord Chief Justice, LUIE says they talked about this adventure and picking up the men. I put this question—"I daresay you told JANES that he knew you were steward of the 'Osprey'?" and he answered, "Decidedly he did." "And that JARVIS and LEWIS were two of the 'Bella's' men?"—"Yes." "Did they talk about the shipwreck?"—"Yes, they talked over everything. They were English people, and had more conversation with one another than I." This is a conversation alleged to have taken place with JANES within two weeks of the time of LUIE's alleged arrival in Ballarat. I ask you to bear that in mind when I come to call your attention to the way in which this Defence has been conducted. If LUIE's story had a semblance of truth in it would this have been the state of things? There were six men in the boat which LUIE says they picked up, four lying under the seats, and two paddling the boat. Of the six men so picked up Mr. ROGERS had gone ashore at Melbourne with the Captain, whom LUIE says he never saw afterwards, and that he took two of the other men, JARVIS and LEWIS, with him in the 'Bella's' boat to Melbourne, and that they proceeded to Ballarat. The account which the Defendant himself gives early in the month of February, 1867, is that on the arrival of the 'Osprey' at Melbourne Sir ROGER went on shore with the Captain, and returned to sleep on board; that the next day he went again ashore, and tried to get a passage to England and failed; that he slept that night again on board; and that all this time the shipwrecked crew, who had worked in the navigation of the ship, still remained in her. What the Defendant here says is an absolute contradiction of the story LUIE has told.

The LORD CHIEF JUSTICE: It is necessary to bear in mind that in his affidavit the Defendant does not state he slept on board a second time, and in his evidence he corrects his first statement, and says that was a mistake.

Mr. HAWKINS: My argument is not weakened thereby, because, according to LUIE's statement, on the morning of their arrival, directly after breakfast the Captain went away with ROGERS, and he never saw the Captain again, and that later in the day he left the vessel with two of the 'Bella's' crew, while the Defendant says that when he left all the crew still remained on the ship. I said I would show you that the Defendant must be cognisant of the perjury of LUIE. Now nothing could be more conclusive of it, it strikes me, than the adoption of a tale which in all its details is so diametrically opposed and contradictory to what the Defendant himself had sworn. First of all, he permitted LUIE to swear that they picked up the boat 500 miles from the Brazilian shore. The wreck took place 150 miles from the shore; the difference between 500 and 150 would be 350 miles, so that it is absolutely impossible that a boat rowed by men could, under the circumstances, have made 100 miles a day across the ocean. That is the first glaring inconsistency and untruth. LUIE says that the men picked up were six in number only; the Defendant swore there were nine. LUIE swore they picked up the 'Bella's' boat and took it with them to Melbourne, and abandoned it there, while the Defendant says they never picked up the boat at all. The Defendant says there were eight passengers on board with whom he conversed, and that they were English people going to Melbourne. LUIE says they had not a passenger on board. LUIE says the captain was called the "old man," and that his name was BANNETT. The Defendant says that his name was OWEN LEWIS or LEWIS OWEN. The Defendant says he was known to be a young English gentleman, and that his name was Mr. TICHBORNE. Says LUIE, "We knew him as Mr. ROGERS, or ROGERS, as we more familiarly called him, and I thought he was a runaway bankrupt, and I taxed him with being a runaway bankrupt, and he did not deny it." The Defendant said he dined at the captain's table. LUIE says he kept him close as a mouse in his berth. The Defendant never mentioned one single word about his being washed, and certainly not all over, by the steward day after day, and of his being hurt by the crooked finger of LUIE; and least of all did the Defendant remember, as ROGER TICHBORNE I should have thought would have remembered, picking oakum on the deck by way of amusement. These are little playful inventions. When you add these direct contradictions to the immediate recognition which the Defendant gave to LUIE as he entered the room, "Como esta, LUIE?" and as he said without any notice of his coming, which they put forward to you as a striking proof of the truth of LUIE's story, I don't know, gentlemen, what you may think of the matter. It strikes me that immediate recognition is beyond all question a circumstance which seems to close the matter up, and leave it impossible to question the fact that the Defendant must have known that this was a perjured and invented story from the beginning to the end. It was impossible for the Defendant to have seen the man LUIE, for LUIE himself was in Hull about his fraudulent pursuits during 1853 and 1854, nor could he have been seen by another Witness—"Captain" BROWN—in Rio. Was there nothing beyond all this to excite suspicion in the mind, not only of the Defendant, but of the Defendant's advisers? What a strange story it was that this man LUIE told! I don't believe—I can't believe—I won't believe that anybody was deceived by that story when I come to look at it. What strikes me as marvellously suspicious is, that during the whole of this enquiry, except upon the morning of Monday, the 7th of July, on which day LUIE's statement was taken down by Mr. WHALLEY and Mr. O'BRIEN, the Defendant has never appealed to this Court to be absent on account of illness. It is an odd circumstance that on the morning of this man's discovery, or alleged discovery, we should have for the first time the Defendant absent from this Court. Now, let me bring before you the extraordinary story which it was left to me to elicit from the Witness LUIE. He says, "I am a resident now in New York. I keep a grog-shop there. I had a runaway wife. I heard she was in Belgium in some unknown place. I left the grog-shop in the care of a female friend of mine, with my daughter. I came over to England, and I landed at Liverpool, and made my way ultimately from Liverpool down to Folkestone, where I took the steamer and went over to Ostend, looking in Antwerp and Belgium for this runaway wife. I could not find her"—I don't wonder at it—(laughter)—it is no use searching for what does not exist—"I could not find her, and I came back on board the Belgian. We landed in the London Docks on the night of Saturday, the 5th July. I was going to take my quarters up in the Sailors' Home, but before doing so I went into a small beerhouse, and standing there at the bar I heard somebody mention the TICHBORNE Trial, and on the spot I said, 'That must be ROGERS that I picked up.'" Mentally he said this. "I asked, where is ROGERS? Nobody could tell me where ROGERS was. They knew he lived at the West-end. Thereupon I got on to a 'bus and went to the West-end; but the 'bus I was on was going to Paddington, and I did not want to go to Paddington, and so I stopped it and got out, and took up my lodging late on Saturday night at a house"—which he can only describe as a house that had roast chickens in the window. (Laughter.) He lodged in the hen-roost, I was going to say; he might just as well have said it, but he lodged in the fowl-house. (Laughter.) "When in the fowl-house what did you do?—I could do nothing except go to bed. Did you not inquire about ROGER, then?—No. What did you do on Sunday?—Sunday is a day of rest, and I am a great observer of the Sabbath—(laughter)—and I could not hunt up Mr. ROGERS on the Sunday, and so I thought I would take a trip to Brighton. And why did you take a trip to Brighton?—Because I found everybody going to Brighton." (Laughter.) Now LUIE's experience of London must be quite as great as that of any of us, and he has seen a good deal more of varied life—(laughter)—and he must have laughed when he thought we were going to be taken by the story that he was attracted by a stream of people going down from the fowl-house to Victoria Station. (Laughter.) He amused himself all that day at Brighton, and came back late on Sunday night. He did not say he went to church. (A laugh.) When he came back to the fowl-house his perch seemed to have been occupied—(laughter)—for he could not get in. What, with money in his pocket, not knock at the door and say, "Let me in, and let me have a sofa!" I think I know the reason. He got back late; it was past 12 o'clock, and therefore it was Monday morning, and being a working day he thought he could renew his search and make up for lost time. (A laugh.) So he wandered up and down the Vauxhall-bridge-road until at last he got into a coffee-shop, and met a cabman, who told him where the Defendant lived, went to the Claimant's house, was turned away by the woman at the door, goes to Poet's-corner, where he tells his tale, which was taken down by a gentleman named O'BRIEN and shown to Mr. WHALLEY, and then he says, "Why I, O'BRIEN, and WHALLEY went off to the Defendant's, at Bessborough-gardens." I have already described to you the scene which took place there—"Como esta, LUIE?"—as though he recollected him after a separation of more than nineteen years. Let me ask you whether it is possible for any man to be so weak as not to be struck with the

extraordinary tale I have just related to you? What on earth could the Defendant's advisers have thought of this tale, or of this man suddenly springing up as though he were a providential Witness sent for the purpose of rescuing from peril the Defendant. I am quite certain that any of you who hear my voice would have said, "Why this is a very odd tale; where have you been living? Let us know something about you, and let us know whether you are really the man you say you are"—because to pick a man out of the streets to tell a story like this is very extraordinary. Indeed, the Defendant's Counsel, with a large amount of experience of life, tells us that you may go down to any seaport and pick up sailors to prove anything. I quite agree you may pick up many bad people, but you don't pick up many people in the streets on whom you place reliance. These are things which strike home to one's common sense, and you must ask yourselves whether a story like this was not of itself calculated to excite in the minds of every single person who heard it on that day the gravest suspicion. But what did they do? Did they show they believed this man, anxious as he was to get back to New York? If so, why did they find him a home, and send him to live for three whole months with PULLEN, the bill-sticker, by whom he is kept in careful seclusion.

The LORD CHIEF JUSTICE: The part of the story reflecting upon others, and upon which this man has never been contradicted, is that where they tell him that there are persons ready to support him. The pilot and the others who were to support LUIE, but whom LUIE was not allowed to see, must either have been fictitious persons, who, of course, it was never contemplated to bring forward, or persons whom LUIE was led to believe would be prepared to back his story in order to give him greater confidence and courage in his statement. I did hope for the credit of the parties concerned, that that story of LUIE about his having been told that there was a pilot and sailors belonging to the 'Bella' and 'Osprey' who were ready to support him, would have been contradicted.

Mr. COOPER WYLD: It would bear another interpretation——

The LORD CHIEF JUSTICE (very sharply): *I beg your pardon, I did not ask you for any.*

Mr. COOPER WYLD: If your lordship pleases.

The LORD CHIEF JUSTICE: *I am making observations to the learned Counsel. I did not address myself to you.*

Mr. COOPER WYLD: If your lordship pleases.

The LORD CHIEF JUSTICE: I take it for granted you did not know about the pilot.

Mr. COOPER WYLD: What I know of course is only in my brief. As your lordships know, I was introduced into the Case very recently.

The LORD CHIEF JUSTICE: I do not believe you would be a party to telling the man that the pilot and sailors were ready to support his story.

Mr. COOPER WYLD: Certainly not, my lord.

The LORD CHIEF JUSTICE: And I shrink from believing that part of LUIE'S statement was true; *but I must say I think it ought to have been long ago contradicted.*

Mr. HAWKINS: I should have been glad if I could invite you myself honestly in the discharge of my duty to discard that statement made by LUIE, which, as my lord says, ought to have been contradicted, and everybody expected if that story were untrue it would have been contradicted. But to hear it said in open Court that somebody connected with the Defence had made a deliberate statement that they had got a pilot in England, but that they would not let LUIE see him, and, moreover, to hear it said that the reason for not letting him see him was that it should not be said that they concocted the story, is a matter which seems to me to demand an explanation and a contradiction. But now let me ask you whether or not in LUIE'S own story there were not ample means afforded of testing the truth of his story. He told us there were men living who knew the very circumstances to which he deposed, and he said one man was MCCARTHY, who lived in Burke-street, and was a wealthy man.

Mr. Justice LUSH: According to his account MCCARTHY must have been there at the time Defendant's Counsel was looking out for Witnesses.

A JUROR: And at the time when the 'Melbourne Argus' had the advertisement.

Mr. HAWKINS: Quite so. He gave, moreover, the names of ANDERSON, and of HARRY, the sailmaker, as two of the 'Osprey' crew; and, in short, he gave every opportunity to those whose duty it was to investigate his story of inquiring and ascertaining whether it was true or not. And somebody felt the necessity of Mr. WHALLEY making the journey to America, especially for the purpose of ascertaining how the facts were.

The LORD CHIEF JUSTICE: I beg your pardon, Mr. HAWKINS. Mr. COOPER WYLD, being struck by the irregularity of your interposition, I was a little quick in stopping you. It is a matter with which professional conduct, or, at all events, the conduct of the persons advising the Defendant, is concerned, and if there is any observation you wish to make, make it by all means. I was perhaps too hasty in stopping you. You were going to say that this account was capable of some other construction. If any other construction occurs to your mind, by all means state it.

Mr. COOPER WYLD: I am indebted to your lordship. What struck me at the moment was that the statement might be a pure invention in the mind of the man LUIE.

The LORD CHIEF JUSTICE: That I quite admit, and any declaration to that effect would have been perfectly satisfactory to my mind. I was disappointed and distressed at there never having been given, by Dr. KENEALY or anybody else, any positive denial of any such statement.

Mr. COOPER WYLD: Your lordship is not more distressed than I am that such a denial was not made.

Mr. HAWKINS: Gentlemen, I have called your attention to the matters which this man mentioned, which would have enabled the most searching inquiry to be made. If there was any corroboration of LUIE'S story, why have we not had it offered? You know perfectly well that no corroboration has been offered. I don't know what communication Mr. WHALLEY made after his arrival in America. We know that he returned from America on the 4th or 5th of September, and we have a right to assume that he could get no confirmation of LUIE'S story. But they kept LUIE still secluded, and no attempt was made to put him in the box till October—he was almost the last Witness called. If they had believed him, why should they keep him all that time in seclusion? Gentlemen, in the ordinary course of things it would have been absolutely impossible to have procured any evidence for the purpose of contradicting LUIE'S tale. I wonder whether LUIE was reserved till the last in the hope that his story, being incapable of confirmation, might, by delaying it till the last moment, be incapable of contradiction. It is a matter which occurred to my own mind, and I suggest it to you. Does it not strike you as being very remarkable that after JANES had been put into the box, fresh from Poet's-corner and direct from the society of LUIE, they should not put a single question to him as to whether that part of LUIE'S story in regard to what passed at Ballarat was true or not? With regard to Captain BROWN, I have already shown him, in more things than one, to be a perjurer; and now I have another matter against him which I do not hesitate to say will stamp him as a person whose wicked statements really are appalling. Now, Captain BROWN was called on the 8th of October, several days before LUIE, and his evidence was offered by anticipation. He was to offer confirmatory proof of that which LUIE was afterwards to depose to; and this tale that BROWN told is well worthy of consideration, not only to show what sort of a person BROWN is, but also to show the glorious uncertainty which the Defendant's advisers were in, even as late as the 8th of October, as to what 'Osprey' they should put forward to support their Case. Captain BROWN said he had seen, in Rio, in 1853, the 'Osprey' of which LUIE said he was the steward. He swore that he knew LUIE was steward of the 'Osprey' which he saw at Rio in 1853. He identified LUIE as the man he had seen at Poet's-corner. He swore also that he had read on the 'Osprey' the word "Baltimore." He said he saw her in 1853 at Rio, that her Captain's name was LAWRENCE, that the mate's name was LEWIS, and that he had seen him outside HARCOURT'S office. He went up, shook hands, and called him LEWIS. That ties the Defendant, who put forward Captain BROWN, to LUIE, and to the 'Osprey' on which the word "Baltimore" was painted. BROWN'S evidence was given on two days. The first day he said the Captain's name was LAWRENCE. At night he has the advantage of talking to LUIE, and so on the second day he says the Captain's name was JOHN LAWRENCE or JOHN LAWRENCE BENNETT—tacking on the name of BENNETT to suit LUIE'S tale. When the Counsel for the Defendant was speaking of the New York 'Osprey' the Defendant corrected him loud enough to be heard by everybody that it was the New Bedford 'Osprey.' That, strange to say, turned out to be a Baltimore 'Osprey,' as we learnt from the evidence of Mr. PURCELL. When I said we had been to the expense of bringing Captain M'COMBER of the New Bedford 'Osprey,' and his log, that remark was received by the other side with a laugh of triumph; but Captain M'COMBER turns out to be a Witness of the greatest value. Mr. PURCELL found no trace of any 'Osprey' except the Baltimore 'Osprey,' and Captain M'COMBER was Captain of that ship during the whole of 1854. He said that he never picked up a shipwrecked crew, and was never near Melbourne in that year. Therefore, as far as the New Bedford 'Osprey' is concerned, the thing is an entire fiction. In 1853, when BROWN says he saw LUIE at Rio, LUIE was, we know, at Hull. After what we have learnt about LUIE, it was a little striking to hear the Defendant's Counsel saying he would not abandon one word of his evidence. His photograph was paraded in the shop windows as if he had been sent by Providence to assist the Defendant; and I am thankful that vanity led to that exhibition. But for that he might not have been identified by persons whom he had defrauded. The two clerks might possibly have been mistaken; but the Defendant's Counsel was imprudently bold.

The LORD CHIEF JUSTICE: *I don't know whether it was imprudence or ill-temper.*

Mr. HAWKINS: Poor Mr. POLLARD was to have been committed for Contempt for daring to put a hand on LUIE. Under these circumstances the other side found fresh Witnesses to their hearts' content, and now the Jury know all about LUIE. As to the suggestion that LUIE was sent by the Prosecution to entrap the Defendant, it was too contemptible for notice. How could they have suggested the words "Como esta, LUIE?" (Laughter.) The Defendant's Counsel maintained that he had proved his 'Osprey' case, and asked why I did not call some of the 'Osprey' people. How could I call the 'Osprey' captain when there were so many 'Ospreys'? This reminds me of an old friend of mine, an Irishman, who was once engaged in defending

at Quarter Sessions a man charged with stealing a duck. The prisoner said he picked it up, that his dog killed it, that a policeman put it in his pocket, and although he gave no less than seven different accounts of the way in which he came into possession of the duck, my friend, in addressing the jury, admitted the variety of explanations, and said he did not care about the variation provided the jury would adopt one of them. (Laughter.) I think he got his client off. (Laughter.) The 'Osprey' Witnesses for the Defendant differed immensely in their accounts of her, and proved nothing. Mr. GOODYEAR'S evidence showed how much at sea they were. He said that in 1855 he was living at Cowes, and saw eight people leaving the 'Osprey' for a holiday, dressed in blue jackets and white trousers, and carrying bags. These men, dressed like the late Mr. T. P. COOKE, can hardly have been the six poor fellows of whom we have heard so much. In the case of another 'Osprey' twelve men were seen. It would be idle to dwell on such statements. 'Osprey' is a very common name of vessels.

The LORD CHIEF JUSTICE: In LLOYD'S books only two 'Ospreys' were found, one of which went from Glasgow, the other being the Geelong 'Osprey.'

Mr. HAWKINS: At all events, I have disposed of the only 'Osprey' that we are concerned with. * The real question is whether any 'Osprey' arrived at Melbourne in July, 1854, with the Defendant on board, and of such an arrival there is no trace whatever in the official records kept at Melbourne, or in any of the public journals, the conductors of which anxiously collected intelligence respecting all vessels which arrived; and no one except LUIE professes to have seen the Defendant when he arrived. Since 1865, or rather since 1854, there has been every opportunity of making inquiries on the subject in all parts of the world, and there is no trace of persons connected with any 'Osprey' having ever even asserted that it had picked up a portion of the crew of the 'Bella.' The Defendant and his friends made the most diligent search in the books at LLOYD'S, and they could not find any dates that fitted in with the story told. Mr. GARDENER said that at one time they doubted whether the ship that went down was really named the 'Bella'; and the Defendant himself said, "How do they know it was the 'Bella' that I sailed in"? He was for some time uncertain in his mind as to what vessel he should fix upon. When he came to England he searched at LLOYD'S to see if he could make the 'Osprey' and the 'Bella' fit, and he then wrote to GIBBES to see if any 'Osprey' arrived in July. It seems that in July, 1868, he got some information from a man named BRIDGER, who has not been called, to make inquiries about a 'Themis,' Captain NICHOLLS (who is dead), which vessel arrived at Melbourne in July, 1854, having picked up a man named JARVIS. In June, BRIDGER, who was admitted to be the Defendant's agent, called on the owners, Messrs. DE WOLFF, in Liverpool, and the result of a search then made was that there was no trace of a rescue in the log. The Defendant then went down to Liverpool, called on Mr. WALTHEW, the broker of Messrs. DE WOLFF, and made a sketch which tallied with the way in which the 'Themis's' cabin was fitted, and he went so far as to point out the particular spot in the state-room which he occupied, LUIE being allowed to state afterwards that he slept in the steward's cabin. Captain NICHOLLS was dead. A day or two after, in a second interview, he said he had seen Captain NICHOLLS'S brother, who, he said, was like Captain NICHOLLS. How did the Defendant get the 'Themis,' and give such an admirable description of her? There was an oil painting of her hanging up in the office of Messrs. DE WOLFF and BRIDGER, and he had seen it. Under these circumstances the Defendant wrote to Mr. ROUS from the Victoria Hotel, Liverpool, saying:—"It is now beyond all doubt it was the 'Themis' 'picked' us up; the owners' brokers and agents are all convinced of this." Here then he was adopting the 'Themis,' with NICHOLLS as the Captain, instead of the 'Bella,' with LEWIS as the Captain. At various times he has been willing to adopt the 'Osprey' and the 'Themis.' At one period he says he knows nothing about the other people saved; at another he recognises LUIE and remembers no one else. Gentlemen, I propose now to call your attention to what seems to me irresistible evidence that no soul left the 'Bella' alive. According to the evidence of Mr. KILLEY, and Mr. VINING, she was a new vessel built especially for the Brazilian trade, had had five voyages, was commanded by an experienced Captain, and the weather at the time was fine. It is not suggested, even by the Defendant, that she was in an unseaworthy condition. It is matter of nautical experience that if she had 12 feet of water in her she could not possibly have floated. It was proved indubitably that she was loaded with coffee, which was too high in her for her to sail steadily, and, according to Mr. KILLEY'S evidence, she must have gone down suddenly in a squall. Mr. JOHN BATES NICHOLLS of the ship 'Eustace,' who saw the 'Bella' sail from Rio, said that he saw a chest of drawers in the long boat as she left the harbour. In LLOYD'S books it was stated that on the 26th of April a long boat bottom up was picked up by the 'Kent,' Captain HOPKINS, with a round-house, water cask, and a chest of drawers close to the long boat. If the Defendant's story that the men who escaped were strong enough to row for 36 hours, how could the long boat and the drawers have got separated?

The LORD CHIEF JUSTICE: They might have been separated by the action of the waves.

Mr. HAWKINS: From the fact of the long boat and the chest of drawers in her being close together, Captain HOPKINS concluded that the vessel went down close to where they were found. This seems to me to prove conclusively that the Defendant's story is not true. The Defendant's Counsel says he will not give up the evidence of Captain BROWN. I do not ask you to reject it, because I know you will. (Laughter.) Having thus disposed of the story of the wreck, I will now call your attention to the Defendant's account of his alleged landing at Melbourne. The first mention of this occurs in a letter from Mr. HOPKINS (Vol. II., page 399), in which he said that after arriving at Melbourne the Defendant wished to get a passage home. In the Defendant's subsequent evidence, while he spoke of the unsettled state of Melbourne on his arrival he said nothing about an 'Osprey.' If an 'Osprey' arrived, there must have been some official record of the fact; no laxity will account for perfect silence. If a shipwrecked crew had arrived the 'Argus' of the next day would have contained a startling paragraph about it. Two vessels sailed for England immediately after the Defendant's alleged arrival, in either of which a shipwrecked young gentleman might easily have obtained a passage. Has the Defendant given any reason for ROGER'S not writing home to relatives for whom he felt such strong affection, as shown by his letters to his father, Lady DOUGHTY, and others? Do you think that ROGER TICHBORNE could have resisted the natural impulse to write home the

* The following letter, addressed to Mr. ONSLOW, by Mr. LIARDET, disposes, we think, of this assertion.

Deptford, 15th January, 1876.

To GUILDFORD ONSLOW, Esq.

MY DEAR SIR,—In reply to your letter of the 10th inst., I beg to say I forget when the 'Osprey' came to Melbourne. They told me on board the 'Osprey' they had picked up part of the crew of the 'Bella,' and that off the coast of America; that a young gentleman was among them; and that when they were picked up they were in a very exhausted state.—Very truly yours,

(Signed) B. E. LIARDET.

The following declaration also proves the fact of an 'Osprey' picking up a shipwrecked crew in 1854. Had the Claimant possessed the means, numbers of Witnesses, who resided abroad would have been brought over to depose to important facts concerning his Case:—

STATUTORY DECLARATION OF MR. J. R. WITHERS.

Melbourne, Victoria: to wit.—I, JOHN RICHARD WITHERS, of No. 20, Eldon Chambers, Bank-place, in the City of Melbourne and Colony of Victoria, an Attorney, Solicitor, and Proctor of the Supreme Court of the Colony of Victoria, do solemnly and sincerely declare: THAT I arrived in the City of Melbourne from England *via* Adelaide, on or about the tenth day of October, one thousand eight hundred and forty-nine. That within about a week of my arrival, I was engaged by Mr. THOMAS CLARK, as Managing or Chief Clerk in his office, he then being in practice in Bank-place, aforesaid, as an Attorney-at-law and Notary Public. That I continued in his employment, and in the employment of Messrs. CLARK & MOULE (the latter having been taken into partnership by Messrs. CLARK) and also of Messrs. CLARK, COSTER, & MEEK, until about the month of March, one thousand eight hundred and sixty-one, when I left, and went into practice for about two years with Mr. HENRY GRAVE, of the style of WITHERS & GRAVE. That whilst employed as aforesaid, I, amongst other duties, had the management of the Notarial part of the business which was extensive, and included the preparation of Ship's Protests. That I have a distinct recollection of having drawn a Protest of a vessel called the 'Osprey,' some time in the year one thousand eight hundred and fifty-four. That at the time, the Master and other Appearers attended to complete the said Protest, they were accompanied by one or two other persons, who, I was told, had been wrecked and were picked up by the 'Osprey,' and one of them, a young man, who was standing in the front doorway, I was informed by one of the Appearers, was a foreign nobleman. That the said Protest was so drawn by me from the Log-book of the 'Osprey,' and which book was from inadvertence left in my office, and remained when I left as aforesaid. That I have recently been making inquiries, and diligent search for the said Log-book, and the Draft of the said Protest wherever I thought the documents were likely to be found, but up to the present time without success, in consequence of Mr. CLARK having left the Colony about eight years ago, and his papers, &c., having been distributed; but I verily believe that I shall succeed in finding them.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria, rendering persons making a false declaration, punishable for wilful and corrupt perjury.

J. R. WITHERS.

Declared at Melbourne aforesaid, this third day of October, in the year of our Lord one thousand eight hundred and seventy-seven. Before me, a Justice of the Peace, within and for the central Bailiwick of the Colony of Victoria.

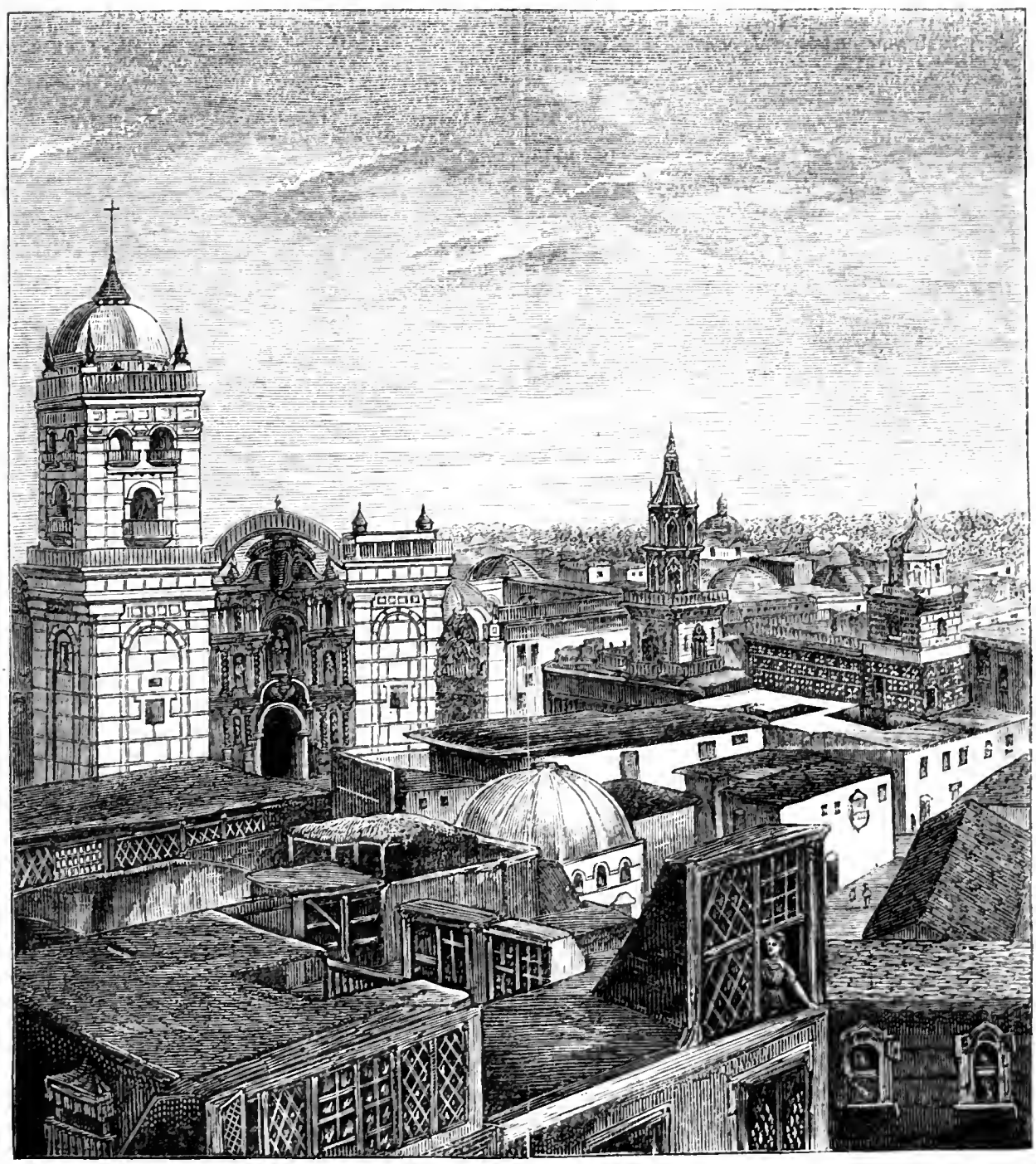
moment he reached Melbourne, and to tell his friends of his perils, his sufferings, and his safety? And what explanation does the Defendant's Counsel give of his silence? I have looked in vain for any trace of any excuse whatever. There was an inconsiderate boldness about the learned Counsel's suggestion that ROGER TICHBORNE had determined to lead a wild life in Australia.

The LORD CHIEF JUSTICE: A reformed life.

Mr. HAWKINS: Just so; urged by remorse he was going to lead a new and better life—amongst the bushrangers. (Laughter.) But the learned Counsel forgot that it was by the merest accident that he went to Australia at all. He forgot also that Sir JAMES TICHBORNE states that he had had a letter from his son informing him that he had taken his passage home. Then again his letters of credit were only for three years.

The LORD CHIEF JUSTICE: His letter of credit was for £2,000 for two years, but he writes home for another thousand pounds. I suppose it was to commence his hermit life upon. (Laughter.) The last theory of Dr. KENEALY was that ROGER TICHBORNE found on board the 'Bella' a number of adventurous spirits whose stories inspired him with a desire for life in Australia (A laugh.)

SCENES IN THE LIFE OF ROGER TICHBORNE.



No. 61—CHURCH OF ST. AUGUSTINE, LIMA.

Mr. HAWKINS: The last thing, or the last thing but one, that the Defendant's Counsel did was to set up the health theory. He dwelt upon the delight of breathing the pure breath of heaven in the glorious air that breathed on all sides in Australia. (Laughter.) Why should a man go back to five-and-twenty thousand a year when he could enjoy freedom and health in the bush, and associate with kindred spirits "under the broad canopy of heaven"? What is five-and-twenty thousand a year to glorious health—and keeping a butcher's shop at Wagga-Wagga? (Loud laughter.) Our experience in this country is that a man who has five-and-twenty thousand a year may pick the place in which he may carry on his pursuit of health, and he may even set up an amateur slaughter-house if he pleases (Laughter.)

The LORD CHIEF JUSTICE: It is only fair to the Defendant to observe that these sublime theories were never started by him at all. (Laughter.)

Mr. Justice LUSH: Nor the withered leaf. (A laugh.)

Mr. HAWKINS: I had forgotten that. The learned Counsel said that it was a withered tree that was symbolical, but that as ROGER TICHBORNE could not put a tree into his letter to Lady DOUGHTY he had sent her a leaf. Why, he might as well have sent her a bunch of matches.

The LORD CHIEF JUSTICE: The learned Counsel said that in

Hebrew the word for a withered tree signified also something to which I need not refer, and that that was understood not only by him, but by poor Lady DOUGHTY. But all that was obtained from the recondite researches of the learned Counsel, and had never occurred to the Defendant.

The FOREMAN: Nor to Lady DOUGHTY. (A laugh.)

Mr. HAWKINS: All I say is, if the Defendant is ROGER TICHBORNE, and he wrote the letters, why didn't they ask him what he meant? And now I am happy to be able to close the gates to the Defendant's imaginary life, and to meet him with the most positive contradiction. His account is that whilst he was strolling about Melbourne he went to a horse sale, and was engaged by Mr. WILLIAM FOSTER; and that while in his service he assumed, for family reasons, the name of TOMAS CASTRO. He says that Mr. FOSTER took him with him in July, 1854, to his station at Boisdale, and that he afterwards gave him charge of his station at Dargo, where he remained for nineteen months. That story is absolutely false from beginning to end, with the solitary exception that the Defendant was in the service of Mr. FOSTER. I will not dwell on the improbability of a young gentleman accustomed to every luxury, and unable to travel without a valet, suddenly becoming a changed man because he had been providentially rescued from a great peril—changed from a man of honour and truth, who knew not what a dishonourable action was, into an associate of bushrangers and persons of the most degraded character. I will only point out that Mrs. MACALISTER, Mr. FOSTER'S widow, distinctly proved that the Defendant came into her late husband's service as ARTHUR ORTON at the close of the year 1856; and that his story could not possibly be true, because Mr. FOSTER lived at Erin Vale till the spring of 1856; and moreover he was not at Melbourne at all in July, 1854.

[The Court here rose for lunch.]

On its resuming,

Mr. HAWKINS said: I have not thought it necessary to inflict upon you a detailed analysis of ROGER TICHBORNE'S personal peculiarities. The daguerrotypes will speak for themselves; and you will be able to judge from them how far my account is correct. I think everybody will agree that ROGER TICHBORNE was painfully thin. He had a long thin face, a sallow complexion, and very dark eyebrows, like his mother's. He had a habit of raising his eyebrows when he was excited, and that has been erroneously called a "twitch." He had dreamy, pensive, expressive blue eyes; his hair was long, straight, and dark brown; his nose was slightly turned up at the end, and he had wide nostrils. His ears were peculiar, for they were closely attached to his face; and on that point the photographs give conclusive evidence. His hands were long, his fingers long, his feet not large, and his voice soft and weak. I do not, however, find in the Defendant a trace of resemblance to any one of those features. To suppose that he was ever this would require a great stretch of imagination, and it is difficult to suppose that his face could have been a long and thin one. His complexion is certainly not sallow, and his hair is not long, lank, or very dark brown; nor have his eyebrows the same arch that is observable in the photographs of himself or of Lady TICHBORNE. As regards his ears, they have very pendant lobes, while they are by no means attached to his cheek. Did not ROGER TICHBORNE have adherent ears? Lady DOUGHTY, than whom no one had a better opportunity of observing, speaks very positively on that point, but it seems to me that you have nothing to do but to take the daguerrotypes in your hand and see for yourselves. The medical Witnesses, Mr. SEYMOUR HADEN, Mr. HOLT, and Sir W. FERGUSSON, are agreed that if the ear is attached to the cheek no alteration in age or size can separate it. If then ROGER TICHBORNE'S ear was attached to his cheek, you have only to look at that omission, and the result must be a conviction that he cannot be ROGER TICHBORNE. It has been boldly asserted that ROGER TICHBORNE'S feet were of the same character as the Defendant's; but let us take the measurement. It was proved that the Defendant's foot was 11¼ in length, whereas Mr. RUNCIMAN'S books show that the measure of ROGER TICHBORNE'S foot was 9⅞ inches. ROGER TICHBORNE'S 9⅞ round the instep, the Defendant's 10¾; ROGER TICHBORNE'S 12 round the heel, the Defendant's 14¾. Then there were upon the person of ROGER TICHBORNE certain marks and scars which did not exist on the person of the Defendant and *vice versa;* and there is evidence that there were attempts made to simulate those marks. The Defendant alleges that a little scar on the back of his head was caused by the fall at Pornic; but M. CHATILLON says that, though ROGER TICHBORNE did fall there and hurt himself, there was no wound or blood, and consequently there could have been no scar. On the other hand, the Witness HAYWARD, who was called by the Defendant, said that ARTHUR ORTON had a mark at the back of his head caused by an oyster shell which was thrown at him by another boy. As regards the scar, let us see what Messrs. HADEN and HOLT say about it. They said it was so small that they could hardly find it, and that it was not caused by a contused wound. They adhere to the statement as to the mark on the back of the Defendant's head being from a contused wound. I don't find any real difference between the testimony of each of these gentlemen. We come to deal with Sir WILLIAM FERGUSSON, whose testimony is not so satisfactory. [Mr. HAWKINS read part of this gentleman's evidence, where he said the wound might have been caused by a fall on some cutting substance.] The question is, what the real nature of the wound was. Mr. HADEN and Mr. HOLT both agree it was a clean incised wound, the skin in no sense being injured. Now ROGER TICHBORNE is said by the Defendant—there is no other evidence of it—to have had an accident which was caused by a fishhook running through the eyelid, and that the hook had to be filed out. Now, Mr. HADEN and Mr. HOLT said they had examined the eye and had found no trace of a scar. Sir WILLIAM FERGUSSON said there was no mark on the eyelid, but a speck on the margin of the left eyelid. Now, let me take a mark which must have existed upon ROGER TICHBORNE, viz, the puncture in the temporal artery. There can be no doubt as to the testimony of Colonel BICKERSTAFFE, and there can be no mistake on his part; and we have it even in the testimony of Sir WILLIAM FERGUSSON that such a scar could never be eradicated. Mr. HADEN could find no trace of the puncture in the temporal artery. Sir WILLIAM FERGUSSON could find no trace of it.

The LORD CHIEF JUSTICE: It is my impression that they did not ask him to look, and that it was only Dr. WILSON who said he saw it after manipulating it.

Mr. HAWKINS: Sir WILLIAM FERGUSSON said that such a puncture would never disappear.

The LORD CHIEF JUSTICE: It made an impression on me in this way, that I was surprised, Sir WILLIAM FERGUSSON being here at the time the examination was made by Dr. WILSON, that he was not asked to verify it.

Mr. HAWKINS: Yes. I take the testimony which I have offered of the scar to be overwhelmingly true. The ears I have dealt with. I dispose now of the thumb of the left hand. Now the Defendant has to satisfy you that ROGER TICHBORNE had a defective thumb, and as against that no single Witness, whether for the Prosecution or for the Defence, can say they ever saw that description of thumb in ROGER TICHBORNE. That the Defendant has at the present moment such a thumb is unquestioned. Mr. BARNARD HOLT says that the thumb is in a normal condition, but its present appearance is owing to artificial means, and Mr. SEYMOUR HADEN or Mr. BARNARD HOLT tried and produced upon his own thumb precisely the same appearance. Sir WILLIAM FERGUSSON hesitated at believing this, but we have that gentleman saying "I did it." There can be no question to that. They all agreed, however, that it was not congenital. We not only have the direct testimony on the part of the Witnesses that the deformity never existed, but we have the absence of any testimony as to the question of its being produced by an accident. Until November, 1871, the thumb was never suggested * and I can only attribute it to the appearance in the photograph. I now deal with the marks of venesection in both arms and both feet. We have Witnesses who have spoken to seeing ROGER TICHBORNE bled in the arms. Mr. SEYMOUR HADEN and Mr. BARNARD HOLT found no trace of marks on the Defendant, nor did Sir WILLIAM FERGUSSON, and we are left again to the wild speculations of Dr. WILSON. If he had several punctures all of them could not have disappeared. Now ROGER TICHBORNE having been unquestionably bled in both arms, and there being no trace of a scar in the Defendant, is, I say, conclusive as showing that the Defendant cannot be ROGER TICHBORNE, even without taking the immense body of other evidence I have called. Then I call your attention to the marks on the ankles. It was certainly three years after M'CANN had asked if he was bled in the ankles that the Defendant showed these marks. We know that before 1871 he was attended by Dr. SUTHERLAND and Dr. CANTON, but we have not had those gentlemen. Sir WILLIAM FERGUSSON'S evidence as to the Defendant's marks entirely accords with that of the other gentlemen. He says there is no trace of any puncture in the saphena vein at all. There was no puncture in any place in which a professional man would have bled. Colonel BICKERSTAFFE says that he saw MOORE, the surgeon, perform the operation. I invite you to say that these are not cuts which are produced from the puncture of any veins, and that they are done for the purpose of making the evidence of M'CANN available for deceiving those persons who knew of the bleeding. We have another two deceptive marks on the arm, which I will refer you rapidly to. First of all there is the mark on the shoulder. You know that ROGER TICHBORNE wore for some considerable time an issue, which was spoken to by GOSSEIN, Mrs. NANGLE, and others. On the shoulder of the Defendant are two simple cuts; but there is no indurated skin between them, and this is the strongest proof that there could have been no seton there. There is also no question that ROGER TICHBORNE had an issue upon his arm that would have left an indelible mark; but upon the arm of the Defendant there is no trace of anything like the mark of an issue. It seems to me that the non-existence of anything like the mark of an issue, and the pretended seton mark, are themselves fatal to the Case the Defendant has presented to you. The Defendant said his

* This was a false statement of Mr. HAWKINS, as the malformed thumb distinctly appears in the photograph taken at Paris in December, 1866. There could not be more positive proof of the falsehood of HOLT and HADEN'S evidence than that the Claimant's thumb has remained the same ever since he has been in Prison. His hair has also maintained the same dark colour that it had at the Trial.

seton was caused by a bunch of threads or worsted, which was moved every morning, and that he wore it to relieve him of spasms. Anything more indicative of ignorance as to ROGER TICHBORNE could not be conceived. I should not have said just now that no Witness spoke of the thumb, as I believe MARY ANN NEALE, the Melksham barmaid, did. I pass over altogether the testimony of Dr. WILSON, but I may make this observation, that he was the only doctor who was asked to examine the Defendant. Now as to the brown mark. It could not have existed without coming to the knowledge of his mother. Lady TICHBORNE was obliged to say she could not have noticed it.

The LORD CHIEF JUSTICE: *Is there any other Witness except Captain Brown who spoke to the brown mark?*

Mr. HAWKINS: *No one, my lord, except Luie.** I don't say any more about that brown mark; but, to return to the ORTON case, ANN COCKLING speaks of what she called a fruit mark on ARTHUR ORTON'S back. I trouble you with no more marks, but I just call your attention to one or two Witnesses as to the tattoo, simply because the Defendant's Counsel said he would blow that part of the Case into ten thousand pieces, and congratulated himself in having done so, on very insufficient grounds as it seemed to me. It strikes me that if ever there was a Case overwhelmingly proved it was the existence of the tattoo marks. If it is true there is an end of the Case, for there are no tattoo marks on the arms of the Defendant, and he can never say he had any. In 1846 or 1847, SCOTT, the infirmarian at Stonyhurst, says he was talking to ROGER TICHBORNE, who drew up his sleeve and showed him a cross, an anchor, and a heart tattooed upon his arm. He told him it had been done by a sailor in Brittany. SCOTT is either inventing this story or speaking of what he actually saw. I have now to deal with a gentleman who has been most violently attacked—Lord BELLEW. Lord BELLEW has been overwhelmingly corroborated, and therefore I pause to ask you whether there is a shadow of a doubt as to the honesty and integrity of SCOTT. Now Lord BELLEW became a great friend of ROGER TICHBORNE, and as boys they established a little harmless society of which a great deal has been made—the Snob Club, the title, I think, being taken from a little book by ALBERT SMITH. Now Lord BELLEW says he tattooed ROGER TICHBORNE on the arm with the letters "R. C. T." It was done with three needles tied together, and with Indian ink. Lord BELLEW said he had probably mentioned the matter to some friend of his; at all events, it came to Mr. BOWKER'S ears, and Mr. BOWKER communicated with Lord BELLEW, who thereupon gave his evidence. Let me pause to refute the grossly false insinuation that it was altogether an afterthought, and that until Lord BELLEW came into the box the tattoo had never been dreamt of. It was said that Lord BELLEW and Mr. BOWKER had conspired together to make these tattoo marks. I shall show you how wickedly false that statement was, and those who made it knew it to be so. They knew that Mr. LIPSCOMBE as their own Witness had been cross-examined and asked questions bearing on this subject, so it is no use to say it was an afterthought. Let me call your attention to this gentleman, Lord BELLEW, who is absolutely unconnected with the family, who has no interest in this Case, and who, I think, for years has not numbered a member of the family among his friends.

The LORD CHIEF JUSTICE: It was not said that he had any interest in the family, *but the argument is that he has perjured himself. A man in his position does not perjure himself for nothing, so the only motive could be bribery; as he could not be bribed by nobody, there must be a briber. That is the argument.*

Mr. HAWKINS: Then I must say, and I say it fearlessly, it is a most wicked, scandalous, and disgraceful insinuation to make. There was one circumstance in Lord BELLEW'S life only which could be urged against him, and a circumstance which Lord BELLEW said he bitterly regretted, and which he declined to mention unless compelled. The Lord Chief Justice told him that he was bound to answer, and he told the simple facts of the case. You remember the circumstances of the case, and how wickedly they were garbled by the Defendant's Counsel. There was not in the whole of Lord BELLEW'S career one single other circumstance, and my friend Mr. Serjeant BALLANTINE, than whom nobody knows better how to deal with a Witness when he thinks he can fairly be discredited, and than whom no man shrinks less from the discharge of his duty—he thought, like a gentleman, that such matters should not be raked up. What on earth had it to do with ROGER TICHBORNE being tattooed if Lord BELLEW had been guilty of immorality? In God's name what would become of us all if Counsel were allowed to take up all the private matters of our lives whenever we came into the Witness-box? We at the bar are entrusted with great privileges, and with the confidence of the public that we will only use them and not abuse them. We are allowed great license, but if we are to misuse our power and abuse our privilege by making the Witness-box a place of torture, the sooner we are deprived of that privilege the better. But thank God we don't abuse them as a rule, and those who do abuse them have the censure of those who do not. I must say that a more scandalous exhibition I never in the whole course of my life witnessed than the compelling of Lord BELLEW to answer the questions that were forced upon him.

[The Court adjourned at four o'clock.]

* Another falsehood, see the evidence of Mrs. THOMPSON, Vol. VI., page 304, where it is distinctly proved. Some further evidence that a brown mark did exist on the real ROGER has come to light, but too late to be used at the Trial. It has been published in the shape of "A Declaration on Oath," and is as follows: "I ELIZABETH KILL, widow, now residing at No. 25, Liverpool-street, New Town, Southampton, do solemnly and sincerely declare. That in the years 1828 and 1829 I was living as domestic servant in the family of Mrs. LUCY MARY NANGLE, at No. 2, Upper Moira Place, Southampton. That while there in the month of January, 1829, I was in the bedroom of the Dowager Lady ELIZABETH TICHBORNE with her grandson Master GEORGE NANGLE, then a little boy, when Mrs. NANGLE entered the room with an opened letter in her hand she had then received from Paris. She desired me to take the child away. Mrs. NANGLE shortly after came into the nursery, and said 'I have got a letter from Mrs. JAMES TICHBORNE. She is confined. She has got a son, and the child is marked, but it will not disfigure the child in the least, as it is a brown mark on its side, and will never be seen.' This I most solemnly declare upon oath to be true. ELIZABETH KILL.—Declared before me this twenty-second of January, one thousand eight hundred and seventy four, at Southampton, JAMES COCKS, Justice of the Peace, Borough of Southampton."

ONE HUNDRED AND SIXTY-EIGHTH DAY.—WEDNESDAY, JANUARY 28TH, 1874.

The Trial at Bar of the Claimant was resumed before Lord Chief Justice COCKBURN, Mr. Justice MELLOR, and Mr. Justice LUSH.

Mr. HAWKINS, Q.C., resuming his address to the Jury, said:—Gentlemen,—I left off last night having introduced to you Lord BELLEW, and I wish now to call your attention to the overwhelming corroboration which his testimony has received. You won't forget Mr. SCOTT, the infirmarian, who said that at the close of the year 1846, or about that time, he had seen upon ROGER TICHBORNE'S arm the emblems of a cross and an anchor. Lord BELLEW'S acquaintance with ROGER TICHBORNE commenced towards the end of 1846, and his statement in substance was that at the time he tattooed ROGER TICHBORNE there was upon his arm an existing set of marks—those were the heart, the cross, and the anchor—and that he tattooed simply the initials R. C. T., ROGER TICHBORNE tattooing his arm at the same time. I do not think it right to pass over the observations that were made with reference to the correspondence that passed between Lord BELLEW and Mr. BOWKER without explaining to you exactly what occurred. You know that long before June it had been suggested that ROGER TICHBORNE was tattooed. Lord BELLEW explained to you that he did not immediately when he heard of the arrival of the Defendant put himself in communication with the family, of whom he knew very little; but one would naturally suppose that he, having tattooed ROGER TICHBORNE, would mention the circumstance to his friends. It is impossible to trace every person through whom the report came, but we do know that in June, 1872, it had come to the knowledge of Mr. BOWKER that Lord BELLEW had tattooed ROGER TICHBORNE, and he wrote to him on the subject. Lord BELLEW wrote back to say that when at Stonyhurst he remembered ROGER TICHBORNE having the heart, anchor, and cross tattooed on his arms, and also R. C. T., and that he remembered assisting to tattoo his arms, but that he found it difficult to remember whether he tattooed the heart, cross, and anchor, or R. C. T. Now it seems to me that when Lord BELLEW wrote that letter he wrote just exactly the sort of letter that a gentleman honestly stating his recollection would write; and it is an insult to you to suggest that it ever entered into his mind to be guilty of the gross wickedness which has been imputed to him. Some time after that Lord BELLEW had a conversation with Mr. ALFRED SEYMOUR in the gallery of the House of Commons, when he said, "I recollect very well there were the initials and the emblems." Mr. ALFRED SEYMOUR said that the initials were badly and unevenly done, upon which Lord BELLEW said immediately it flashed across his mind that the initials were badly and unevenly done. "That I know now was done by me, because I do remember it was my first essay at tattooing." That is the history of Lord BELLEW, and I put it to you whether in anything he said or did there is anything to justify any human being in supposing that he is desirous to act otherwise than fairly. He speaks simply to that which is within his own personal recollection. A striking and marvellous corroboration of Lord BELLEW is afforded in the evidence of Mr. JOHN REGINALD TALBOT, the nephew of Lady DOUGHTY and cousin of ROGER TICHBORNE, who says that he was staying with ROGER TICHBORNE at Tichborne, first in the vacation of 1846, and in several successive years afterwards; that he often bathed with him, and that he remembered to have seen on his

left arm tattoo marks, although, again like a gentleman desiring to speak the truth whose memory is not perfect, he says, "I will not pretend to describe what the tattoo marks were," and afterwards he said that between the years 1846 and 1849 those marks appeared to be larger. Now, bearing in mind that Lord BELLEW said he did not make the acquaintance of ROGER TICHBORNE till the latter part of the year 1846, and that it was afterwards he tattooed ROGER TICHBORNE'S arm, coupling that with the testimony of the infirmarian, who said that before the end of the year 1846 there were the emblems, the heart, the cross, and the anchor; and coupling that again with the evidence of Mr. TALBOT, who says that in the vacation of 1846 there were only some tattoo marks which were increased afterwards, can you imagine anything more strikingly corroborative of the oath of Lord BELLEW on that subject? The Rev. Mr. RIGBY says he saw the tattoo marks on ROGER TICHBORNE'S arm at Stonyhurst. What is the suggestion made by the Defendant's Counsel? I have had so often to comment on the enormity of the conduct of those who make wholesale accusations, that I abstain from repeating what I have already said; but what do you think of it being said of the Rev. Mr. RIGBY that he was ready to assist Lady DOUGHTY to get up the story of the tattoo marks? Madame CHATILLON again affords a striking corroboration of Lord BELLEW, and says that when she asked ROGER TICHBORNE about the tattoo marks on his arm, he said, "I did the same to the person who did it to me." I shall not waste your time by answering the observations made by the Defendant's Counsel against this lady, because they are entirely unfounded. Mr. GERALD FITZGERALD, of Bingfield, a gentleman who has no interest in the Case, and desires only to speak the truth, says that while on a visit to Sir E. DOUGHTY, in the summer of 1849, one evening after dinner, when going to smoke a cigar in ROGER TICHBORNE'S little room, he turned up the sleeve of his dressing gown and showed tattoo marks on his arm, and he mentioned a sailor in connection with them. This strongly corroborates Mr. SCOTT, the infirmarian, who says that when he asked how they came upon his arm, ROGER TICHBORNE said some sailor did it in Brittany. Mr. FITZGERALD, in cross-examination, says that he told some friends of his that if this man who was coming over was the real man, he would have those marks. Mr. ALFRED SEYMOUR remembers the marks. Mr. GOSFORD evidently has no desire to exaggerate, for though he says that if ten years ago he were asked the question, Was he tattooed? he should have said, "Yes," unhesitatingly; yet that if asked the particular occasions when he saw them he could not tell. HEALY, the billiard-marker at the Clonmel Club-house, said he several times saw bluish marks on ROGER TICHBORNE'S arm; and BRAND, the old gamekeeper at Tichborne, spoke to seeing them on one occasion when ROGER was rook shooting. Captain MANDERS, who, when at Portobello, ran into ROGER'S dressing-room for the purpose of borrowing a whip, said distinctly that he saw the anchor and some other things, but what they were he could not for the life of him recollect. Well, Major NANGLE is called, and though he does not remember himself seeing the tattoo marks, yet he says he does remember that ROGER told him he was tattooed, and that for many years before the Defendant arrived he had heard so from a good many members of ROGER TICHBORNE'S own family. The next in order is Colonel BICKERSTAFFE, who said that until a particular occasion the recollection of the tattoo marks had faded from his memory. His testimony on the subject is elicited in cross-examination, and he says he distinctly remembers seeing the cross and some marks on the left arm on the occasion of the bleeding, his attention being called to them by Dr. MOORE, who is now dead. Major BOTT says very candidly that he cannot say he had ever seen tattoo marks, though he was under the impression that ROGER TICHBORNE was tattooed, but he adds that Major PHILLIPS did, and that they often discussed the subject, and that he told Major PHILLIPS of his impression on the subject. The value of that testimony is, that it proves the tattoo marks were not an afterthought. What is there against the Abbé SALIS, who says that in 1850 or 1851, after dinner, at the Rue de Pyramide, he saw the tattoo marks. WILLIAM BURDON remembers to have seen R. C. T. on the arm during the last visit of ROGER to Paris, when he was going to bed. Mrs. WHITGRAVE says she was at Tichborne in 1852, on a visit to Miss DOUGHTY, and that she has a perfect recollection of seeing the marks, but that her memory as to the figures was incorrect. You will not forget the evidence of Lady DORMER, who remembers the cross, heart, and the initials, and she says that when ROGER TICHBORNE was staying with herself and Lord DORMER at Upton, she remembered that one day, when walking in the woods, he pulled up his sleeve and thrust his arm before her, and said, "ELIZA, look here," and she said, as if annoyed, "Oh, don't show me that." It seemed to give him a great deal of pleasure to put his arm in that manner before her. I declare I should feel confidence in your verdict if Lady DORMER'S evidence stood alone, seeing you cannot doubt her veracity or her honour, and that she pledges her recollection to things which must be wilful invention or the result of memory. Now it has been asked, Why was this man not ordered to pull his sleeves up at once and show his arm? It is quite true, that might have been done; and it is also true that, if he were ROGER TICHBORNE, and had been challenged to show his arm, he would have shown it.

The LORD CHIEF JUSTICE: *Could he not have done so without being challenged?*

Mr. HAWKINS: I am obliged to you, my lord, for the suggestion. If I had marks of that kind upon me I should at once have said, "Why, don't you recollect the old tattoo marks?"

The LORD CHIEF JUSTICE: *That is, assuming always they were there.*

Mr. HAWKINS: Quite so, my lord. Those who were conducting this Case had reason to believe that, long before this man had come to this country, an impostor was to be foisted upon them, and you know, if an impostor was to be foisted upon them who had not those marks, there was no means of forcing the man to show his arm. Indeed, during the late action, when an inspection was demanded, it was refused on the ground that you have no right to force a man to show his arm, or any portion of his person but that which he chooses to expose to your gaze. Do you suppose that, with the crafty aid he had round about him, with such people as BOGLE and BAIGENT, who could make inquiries, he would not have managed to ascertain what the characters of those marks were? Although M'CANN said, "If you are the real man you have got those bleeding marks," he never showed them, nor for years after, until there was time to manufacture them, and so here he would not have shown the tattoo marks until after they had been manufactured. Therefore, it was a very prudent thing not to tell them that ROGER TICHBORNE was tattooed until the time arrived for the Defendant's cross-examination. I pass on to Mrs. NANGLE, who says that in June, 1852, when alone with ROGER TICHBORNE in the drawing room, he pulled up his sleeve, and said in French, "Look at my arm," and that she then saw a cross, a heart, and an anchor, and also R. C. T.; and that he offered to tattoo Mrs. NANGLE. Mrs. GREENWOOD'S evidence was of vital importance, as showing how absolutely unfounded was the suggestion that these tattoo marks were an afterthought. If they were an afterthought I shall show you how Mrs. GREENWOOD'S testimony might have been contradicted by a man who ought to have been in the Witness-box—I mean Mr. GUILDFORD ONSLOW. Mrs. GREENWOOD says that in February or March, 1867, she told Mrs. GUILDFORD ONSLOW * of the fact of the marks being upon ROGER TICHBORNE'S arm. What becomes of the bold unfounded assertion that this was an afterthought, and that until June, 1871, the notion of tattoo had never entered into the mind of any one of the family? Lady RADCLIFFE says she actually saw the marks, and that upon one occasion ROGER showed the marks in the drawing-room when several persons were present. Miss WELD, who was brought from a convent, had no recollection of seeing the marks, but when I proposed to ask her whether or not a conversation had taken place about them with a view of showing Lady RADCLIFFE'S testimony was not without foundation, the Defendant's Counsel objected that it would not be evidence, and the question was withdrawn. Lady RAWLINSON said she knew ROGER TICHBORNE was tattooed, and Mr. DANBY SEYMOUR said he always understood he was tattooed, though he does not remember having seen the tattoo marks. The Defendant's Counsel, in the face of all this evidence, told you he should blow this Case into one—no ten thousand atoms, and he proceeded to do so, *first of all, by imputing wholesale perjury to everybody.*

The LORD CHIEF JUSTICE: No. His theory was this. He said it was impossible to suppose that so many persons of respectability could come forward to say they had seen ROGER TICHBORNE'S arms if they had not seen them, but he suggested that ROGER TICHBORNE was in the habit of painting these emblems upon his arm from time to time, in order to exhibit the arm to shock the sensibility of the persons to whom he so exposed it, and then when it was suggested that there were occasions upon which that was quite impossible, because ROGER TICHBORNE had been taken unawares, he suggested it had been done over night for some jocular purpose, and had remained until it was seen the day after.

A JUROR: He said Lord BELLEW committed perjury.

Mr. HAWKINS: He said Lord BELLEW and Mr. GOSFORD were engaged in a gross conspiracy.

The LORD CHIEF JUSTICE: Lord BELLEW having sworn that he made certain marks on ROGER'S arm, and as the learned Counsel had said they must have been done with a pencil, he had Lord BELLEW to dispose of. *A more careful and scrupulous advocate would have suggested that Lord Bellew must have been mistaken in the person; but he goes boldly to the point, and he says Lord Bellew is a perjurer.* With regard to the body of Witnesses, he says they had all been deceived by the simulated drawing on ROGER TICHBORNE'S arm.

Mr. HAWKINS: I hardly feel justified, but still I am tempted to ask one or two questions. The learned Counsel for the Defendant said, "Well, I cannot tell you when he put these marks upon his arm, whether they were done with paint, blue pencil, or what pigment"—that, I think, was the expression he made use of—"I can't tell you what he did it with, nor the particular occasions. This is my theory upon the matter." There he sat (pointing to the Defendant), and I venture to say there never was anybody more astonished in the whole course of his life than the Defendant, who was struck dumb with the bold suggestion of his own Counsel. (Laughter.) What! Me, with a blue pencil, and my arm bare and a cross, heart, and anchor, and

* Yet ONSLOW, who is supposed to be always manufacturing evidence, procuring false Witnesses, and "coaching" the Defendant, did neither on this vital point!

R. C. T. upon it! He had never heard of it before. (Laughter.) Did it, after all, spring from the fertile imagination of his Counsel's brain? I do not myself give the Counsel for the Defendant very much credit for the suggestion, unless, indeed, he made it for the purpose of creating a smile, in which case he was very successful. But to put it to men seriously as a matter of common sense that, during all those years, commencing from 1816 down to 1852, ROGER TICHBORNE constantly indulged in putting the blue pencil or pigment on his arm for the purpose of causing a little annoyance to those to whom he presented his arm, is really so ridiculous as not to bear comment for one single moment. If the Defendant's Counsel really had the slightest idea that ROGER TICHBORNE had been guilty of such an absurdity for a period of six years, and he was in any little difficulty at all as to what he used for the purpose of producing these effects, why did he not touch his client on the shoulder and say, "Sir ROGER, where did you get the paint, and what was it?" (Much laughter.) Is it not childish to put forward such an argument as that against the sworn testimony of the ladies and gentlemen to whom I have called attention? They have thought it necessary to call before you 250 Witnesses, but they have not called one to say he had seen ROGER TICHBORNE painting his arm with a pigment. Not even old BOGLE—(laughter)—who professes not to have seen it. Moreover, gentlemen, you know a habit contracted like this is not easily got rid of, and how is it that since he has been back in this country we have not seen him with a blue pencil painting his arm? (Laughter.) Miss BRAINE noticed one little trick of tossing the curl back when there was no curl. Why was there not this little trick of painting his arm? (A laugh.)

Mr. TAYLOR (Juror): I think Dr. KENEALY was in earnest, for he challenged the Jury to get blue pencils and try it on themselves; *and I brought this* (holding up a very short piece of pencil) the next morning. It was a whole pencil then.

Mr. HAWKINS: And have you succeeded?

The JUROR: No.

Mr. HAWKINS: A whole blue pencil worn out in vain endeavours. (Laughter.) Against this tattoo evidence let me now see what we have got on the other side. I shall not go through the whole bead-roll of Carabineers and chambermaids, but only take a few. First, BAILEY, who keeps the 'Anchor' at Ropley, says he saw no marks when ROGER was wheeling a barrow 24 years ago. BOGLE said he saw no marks during the visit of ROGER to Tichborne in the summer of 1850; but we know that he was not there at that time. But what does he say? He says that on three occasions he saw him rub his arm, his nightshirt on each occasion being unbuttoned, and that he observed there were no marks; but that he had never mentioned it to anybody until he was in the witness-box in September last. This is a little too good of Mr. BOGLE! Three or four and twenty years ago he recollects three times the nightshirt being unbuttoned, *and three times the same particular flea biting the same particular spot!* (Much laughter.) *Where is the flea?* (Renewed laughter.) *Why don't they call him?* Really this is too ridiculous and childish. I won't say anything more of BOGLE, as I see you do not take it seriously. Then we have CHARLOTTE GRANT and ANN MINES, who saw him washing his hands after fishing, and poor old Mrs. LEGGE, who saw him with bare arms cleaning his gun. But if you saw anybody cleaning a gun or washing hands 20 years ago could you recall the fact in the absence of no special incident attached to it? As to the evidence of Mr. WILD, he is the man who recollected that which never happened—the breaking of the sword, when ROGER TICHBORNE was said to have tried to stab Major FORSTER. After that, and the evidence you have heard upon it, I don't think I should trust to WILD'S memory, to say nothing about his oath. I shall not trouble you further upon this matter of tattoo. If you believe the Witnesses on the part of the Crown spoke the truth you have facts placed before you on which to form a judgment, instead of basing it on absurd suggestions unsupported by testimony, or the loose statements of Witnesses who, speaking twenty-five years afterwards, say they do not remember seeing tattoo marks. I remember, in the early part of my career, trying to make a magnificent defence before the late Baron GURNEY. I think my client had picked a pocket in a crowd. I had twenty people to call to say that they did not see it. Baron GURNEY said to me, "Young man, what is the use of your calling twenty men to say that they did not see it, if you have three or four respectable people who say they did?" There was an end of my fine Defence. I told you of an anecdote of a friend of mine having made his fortune. I confess when this observation was made I thought mine was ruined for life. (Laughter.) I had not contemplated touching on the PITTENDREIGH letters, but one of my friends thinks I ought to say a word upon them, and, in deference to him, I shall do so. It was cruelly suggested that my learned friend the Solicitor-General, now my noble friend Lord COLERIDGE, had used letters which were forged. To impute to my friend that he could be capable of a base or dishonourable action is a thing not to be entertained. It would be an insult to him to suppose that he needed vindication at my hands. But I should like to explain to you the position of things, in order that you may see that the Counsel for the Defendant, who introduced this topic, had better have left it alone, and that instead of assisting him it rather recoils upon his own client. In the action for ejectment the Defendants were represented by DOBINSON and GEARE. Mr. DOBINSON is dead, so that we cannot put him into the box to justify the honesty and honour of his conduct. They knew that we could not put him into the box, and they insult the memory of a dead man who was as honourable as any that breathes. Mr. DOBINSON had a clerk named PITTENDREIGH, and a clerk who had the means of knowing some of the secrets of Mr. DOBINSON'S profession; and PITTENDREIGH had a wife, to whom overtures, for the purpose of gaining information, were made by the Defendant. If they could establish a medium of communication between Mr. DOBINSON'S office and the Defendant they could learn what was being done on behalf of the infant heir. The letter I am about to read to you is one written by Mrs. PITTENDREIGH to the Defendant, and it comes from the possession of the Defendant. Therefore there is no question about the communication having been opened. The letter is dated "Monday afternoon," and says:

"SIR,—A person has just called upon me, and wishes for me to accompany him to your house at Croydon. No doubt you wish me to give up the paper left by the man who has called here, and who stated he was your brother. This I will not do for the present. Nor can I come to your house, as I could not do so honestly."

This is a letter referring to some overture made on the part of the Defendant. My learned friend the Attorney-General asked the Defendant what he did with the letters of the wife of the clerk of the attorney, and he at first said he had some doubt as to whom he had given them, and then he said he believed he gave them to Mr. HOLMES. In this letter the Defendant says, "If you would come to Wellesley-villa I would see you. I give you the word of a gentleman that neither you nor your husband shall suffer for the interview." Here is the man who complains of the PITTENDREIGH letters asking for an interview with the wife of a clerk of the attorney of the opposite side. In replying she told the Defendant that he must be prepared to clear up the contradictions about the 'Bella,' and asked him to write by return of post, adding, "If you help us, we will help you in anything—very secret."

A JUROR: Is that a genuine letter?

Mr. HAWKINS: Yes; and I have referred to it to show that there was a wicked, deliberate attempt to steal information from Mr. DOBINSON'S clerk from Mr. DOBINSON'S office. Mr. HOLMES told the Defendant that personally he could have nothing to do with the matter.

The LORD CHIEF JUSTICE: I don't see much difference morally and professionally between a Solicitor's saying, "I cannot do a certain thing," and his saying, "You can do it."

Mr. HAWKINS: I don't say that Mr. HOLMES acted as has been stated; it was the statement of the Defendant, and I ask you to bear in mind, in justice to Mr. HOLMES, that this is only the bare, unsupported statement of the Defendant.

The LORD CHIEF JUSTICE: It was a great misfortune that Mr. HOLMES was not put in the Witness-box to contradict the statement.

Mr. HAWKINS: Gentlemen, you can easily understand that a woman who could enter into such a correspondence was capable of something more. The Defendant had endeavoured to steal something, and had used her as a tool for that purpose; and I daresay it occurred to her that she might play a double game. Two of the four letters submitted to Mr. CHABOT appeared to be quite genuine, and only one was evidently not so. A man who had shown himself to be a thief and a would-be corrupter of a clerk connected with the other side, and who had told a deliberate lie about the STEPHENS' letters, was capable of instigating the forging of a letter. I say it strikes me that the PITTENDREIGH letters throw a marvellous light on this case, and with that observation I now leave them. As regards ARTHUR ORTON'S letters, you must judge for yourselves whether the writing bears any resemblance to that in ROGER TICHBORNE'S. In some of the Defendant's letters there is a dot over the stroke of the "y," while in some of ROGER'S there is a similar dot. I don't think that dot is to be found in any of ROGER'S latest letters.

The LORD CHIEF JUSTICE: The habit of putting a dot there certainly prevailed in some of the earlier letters.

Mr. HAWKINS: Now here is a remarkable indication of fraud. ROGER TICHBORNE discontinued the dot for some time before he sailed in the 'Bella.' The Defendant's earlier letters, written before he had seen the latter ones of ROGER'S, do not contain the dot, and in his latter ones, written after he had seen the earlier letters, he adopted a habit which ROGER TICHBORNE had discontinued. After recapitulating the different branches of evidence which he had already gone through, the learned Counsel continued:—Gentlemen, if I wanted more than I have already laid before you to satisfy you that this man is NOT ROGER TICHBORNE, I would appeal to his demeanour in this court. How do you think ROGER TICHBORNE would have felt on hearing his father called a cowardly contemptible slave, his clerical friends libelled as men who encouraged him in licentious thoughts and habits, his life at Stonyhurst spoken of as one that degraded him below the beasts of the field, on hearing the officers whom he loved so well assailed and reviled in the strongest terms, and himself described as a person whose brain was diseased and rotten, a dissolute scamp, a semi-savage with a polluted mind, who had surrendered himself to his lusts and passions? The Defendant's Counsel said that his client found a paradise in the bush and pleasant companions in bushrangers. (Laughter.) As to the

Lethe of which the Defendant is said to have drunk, it appears that it did not prevent him recollecting the hopping of an old crow. As to Rose-hill, Manchester, where ROGER was said to have been too intimate with a lady, conduct spoken of as "pleasant but wrong," it turned out that Rose-hill was the address of an old lady named Mrs. SMITH. (Laughter.) Gentlemen, I pass on now to another topic—the recognition by poor Lady TICHBORNE, which the Defendant's Counsel made the great topic of his appeal to you. I must first call your attention to the attitude which Lady TICHBORNE assumed from the first towards the TICHBORNE Family. I attribute her conduct with regard to the Defendant to an insane delusion, not to a wish to foist a false heir on her relatives; and let the blame of anything I may say against her rest with those who have placed her on too high a pinnacle. The earlier correspondence discloses a home which was not happy; but did the fault rest with Sir JAMES TICHBORNE, or with his wife, who exhibited from the first a dislike to his relatives? In a letter of Mr. JAMES TICHBORNE, written in 1840, to his wife's father, he says, "I can no longer bear the cruel, unkind treatment of HARRIET, whose temper increases in violence every day. . . . To my family and relatives she has ever manifested the greatest aversion; her grand aim seems to be to alienate me from my family, and to make a Frenchman of ROGER." ROGER was removed from Mons. DUPANLOUP'S school because his mother's unreasonable demands were not complied with. He was removed by a ruse to Stonyhurst. His mother was to know nothing beforehand, and Mr. TICHBORNE said he thought that the best thing for ROGER. From Stonyhurst ROGER wrote a letter to his mother blaming her for her dislike of his relatives. The father, goaded by her conduct, taxed her with deceit and other faults; but he had a kind heart, and no one ever accused him of want of respect for her. What ROGER thought of her may be judged of from a letter in which he said that her conduct made home a hell for his father. When the wreck of the 'Bella' occurred, though every one else believed that ROGER was drowned with all the crew, Lady TICHBORNE refused to assent to that view, and was ready to listen to any tramp who would tell her an idle story encouraging her in her disbelief. BRAND said she would give money to any one who came to her for that purpose. The sort of idle tales she credited might be learnt from her letter to Mr. DELAFOSSE, written under the impression that he was on board the 'Bella.' Assuming that he was actually on board, which he never was, she there spoke of a "collision" with a clipper, of which there was no evidence, and said, "They tell me that the second mate was saved, and is living near Melbourne." There was no pretence for these assumptions. After the death of her husband in 1862 she commenced advertising for her son, and her letters show how determined she was to find him. In writing to Mr. GIBBES, she said the Defendant might very well have had a brown mark without her knowing it. That letter was written in September, 1866.

The LORD CHIEF JUSTICE: I think that is the only occasion on which she refers to the brown mark.

Mr. HAWKINS: It is, my lord. In the same letter she says, "I think my poor dear ROGER confuses everything in his head, just as in a dream. I believe him to be my son, though he differs from me." She added that his small hands had done a good deal to make her recognise him in the photograph. As to the card case, she said she had not mentioned Brighton because it might turn people against him, and she asked GIBBES to tell him that he had better not mention it to any one. "I believe him," she said to Mrs. ELIZABETH THOMPSON, "to be my son, notwithstanding what he said about enlisting, and the other statements differing from mine. I don't think anything of his not knowing his age exactly." Further, she says, "I believe him to be rather giddy, and that is one reason why his statements differ from mine." She wished the Stonyhurst life not to be mentioned to him, as it might prevent him from coming to England. Gentlemen, I now call your attention to the photograph which Lady TICHBORNE said she had received from Wagga-Wagga. Look at the daguerrotype sent by ROGER from South America, and compare it with that sent to England by the Defendant; look also at the last letter of ROGER and the letter from the Defendant accompanying the photograph which he sent to Lady TICHBORNE, and then ask yourselves is it possible that those two letters were written by the same man, or that the photograph sent from Wagga-Wagga could ever have been confounded with the daguerrotype which represents ROGER as he appeared when it was taken at Santiago? But, says the Defendant's Counsel, "Look at the constant expression in Lady TICHBORNE'S letters, 'Remember, he must be identified.'" That did not mean that he was to be recognised by other people, but that he was to be recognised by herself. She wrote to Mr. CUBITT on the 10th of May, 1866, that he should come over soon—"once acknowledged as my son, everything will go straight." Miss BRAINE said she seemed to be under the impression that her own recognition would be quite sufficient, and that all other evidence would be useless. Now, look at the testimony on this point of witnesses whose independence cannot be doubted. Lady RAWLINSON said Lady TICHBORNE told her that she expected her son home soon, and showed her a letter from the Defendant, but refused to let her read it. Conceive a sane woman refusing that under such circumstances. To Lady RAWLINSON'S question, what she would do if the door opened and somebody entered the room whom she did not recognise, she replied, "I can't help that; I know he is my son." On her showing the Abbé TOURSEL what she called a likeness of her son, he said, "I suppose you have promised some reward." She replied that she had promised two or three thousand pounds; whereupon he shrewdly remarked, "Ah, there can be no impostors in the world if you can't find ROGER." Seeing that she was labouring under a delusion, he naturally suggested a meeting of the family, but she declined to act upon that. She offered the Abbé SALIS a reward if he recognised the Defendant as her son. Her brothers HENRY and ALFRED SEYMOUR in vain advised her to be cautious. At the commencement of 1867 she showed Mons. D'ARANZA, who was admitted by the other side to be honourable and straightforward, a photograph which he refused to recognise as that of ROGER. The Viscomte DE BRIMONT, who lived close to her, was also refused a sight of this photograph, though he had been very well acquainted with ROGER. He said to her, "If ROGER comes home I shall soon recognise him;" to which she replied, "Oh, no, you must see him indoors without speaking to him." He objected to that, and from that day he was never admitted to her house, though he lived, I think, next door to her. Mr. JAMES BOWKER, her legal adviser, who gave her very good, but, as it appeared, unpalatable counsel, went over to Paris to see ROGER, and he told her he had vainly attempted to get an interview with the Claimant since his arrival. From that time she almost ceased to consult Mr. BOWKER. As to the circumstances of the recognition at the hotel, we have the satisfactory testimony of JOHN COYNE. She had before expressed her determination to recognise the Claimant notwithstanding all appearances to the contrary. The Claimant refused to go to her, and she therefore went to him. His face being turned to the wall and his bulky back towards her, she kissed him on the cheek, and said his face was like his father's, but his ears were like his uncle's. Of all ROGER'S old acquaintances M. CHATILLON was the only one who was allowed to see the Defendant. As he drove with her to the hotel in her carriage she said, "I hope, M. CHATILLON, you will recognise my son as ROGER," and he replied, "Certainly, if it is ROGER, but if it is not ROGER, no." When they arrived at the hotel M. CHATILLON asked her not to announce his name; but, disregarding his request, she opened the door of the room, and said, "Sir ROGER, here is M. CHATILLON." You know what followed. M. CHATILLON had gone there to form a judgment, and on seeing the Defendant, he said, "Your ladyship, this is not your son." What is the reason for not calling Mr. LEETE, who ought to have been produced if they wished you to disbelieve JOHN COYNE, for LEETE was there? When CHATILLON plied the Defendant with questions, Lady TICHBORNE interposed with the remark that he had gone through so much that he could not remember things. That is the argument which was also urged by the Defendant's Counsel; and its meaning is that the less he knows about ROGER TICHBORNE'S life the more likely he is to be ROGER TICHBORNE. That seems to me to be a curious argument. The Defendant's Counsel complains of me for suggesting that his Client had been "coached." I boldly say that that was the case. When he answered truly it was about matters as to which he had been instructed; but there were numbers of things as to which he could not be "coached," and they are just those where he answered falsely, or in ignorance. Then there is Sir TALBOT CONSTABLE. Why has he not been produced? Do you think that if they had supposed he would, after hearing the Defendant's cross-examination, have given the testimony he did at the last Trial, they would not have rejoiced to put him again in the box? The excuse they made for not doing so, namely, that I should have subjected him to an unpleasant cross-examination, is idle and unfounded. Then there is poor Mr. BIDDULPH. I call him "poor Mr. BIDDULPH" because—but there, I will not say anything more about him. Give him another glass of champagne and let him go. (Laughter.) [The learned Counsel proceeded to quote specimens from letters of the Defendant written since his return to England, and to ridicule their peculiar style and orthography.] They were, in fact, he said, such as it would have been totally impossible for ROGER TICHBORNE or any person who had ever received anything like the education of a gentleman to have written, even after the disuse for any length of time of literary habits. You will find, moreover, in the great caution which was impressed upon Lady TICHBORNE, another significant circumstance on which I need not dwell. I have nothing to say against her general sanity; for, though not free from eccentricity, she was always able to conduct herself like a lady and to manage her affairs. Those who hatched this great and monstrous fraud knew very well her peculiar delusions. They knew that her heart was yearning after her long-lost son, and they beguiled her with a counterfeit, which, being touched and tested, was found to be valueless.

[The Court here took its midday recess.]

Mr. HAWKINS, resuming: I now approach the last subject with which I have to deal. I come to a question as to the importance of which there can be no doubt. I confess that it was with astonishment I heard the Defendant's Counsel complain of the introduction into this Prosecution, as an assignment of perjury, the allegation that the Defendant had falsely sworn that as ROGER TICHBORNE he had seduced his cousin; for I can find amongst the Defendant's statements no one that, in my opinion, more imperatively demanded investigation. The Defendant's Counsel

says it was introduced for the sole purpose of creating prejudice; but, if he really entertains that opinion, he stands alone in doing so. The Defendant's knowledge of the "Sealed Packet" was actually made by my learned friend Serjeant BALLANTINE at the former Trial the crucial test of the Defendant's identity. I say it was in order to give a colour to his statement that he knew the contents of the Packet that he gave utterance to the daring and wicked assertion that he had seduced Miss DOUGHTY. He has made that charge regardless of the character and honour of a virtuous woman, regardless of the happiness of the husband to whom she was happily married, regardless of the children who called her mother; and now he complains, through his Counsel, that he is challenged to the proof, and threatened with the punishment which awaits such a wilful, wicked, and deliberate perjury. This atrocious perjury, according to my theory, arose out of a desire on the part of the Defendant to extricate himself from the inextricable difficulty in which he found himself in consequence of his ignorance of ROGER TICHBORNE and his family. Long prior to the month of January, 1852, Mr. GOSFORD was made aware of what he describes as a growing attachment between the two young cousins. He states that he did not encourage the feelings of ROGER TICHBORNE, because he felt that Lady DOUGHTY saw a great deal in him that made her hesitate. His character was unformed, and his habits were not those to be desired in the husband of Miss DOUGHTY. Still, Mr. GOSFORD did not doubt that he entertained a sincere and tender attachment for his cousin. On the 2nd or 3rd January, 1852, he was in Mr. GOSFORD'S room at Cheritou, and a long discussion took place as to his prospects. Being determined to give expression to his own feelings in his own way, he wrote a paper and threw it across the table with, "There that is what I will do if I marry my cousin." Mr. GOSFORD said, "Vows are things not lightly to be made; you had better think more of it." ROGER TICHBORNE replied, "No, I won't;" placed the paper in an envelope; sealed it with his own seal; wrote on it, "Private and confidential," and handed it to Mr. GOSFORD. Mr. GOSFORD swears that that was the only document ROGER TICHBORNE ever gave him; and you will remember that in the letter of the 5th of January, 1852, which he wrote to SLAUGHTER respecting his will, he says, "My private wishes and intentions I have already conveyed to Mr. GOSFORD." Afterwards Sir EDWARD DOUGHTY gave a sort of qualified assent to the marriage after the expiration of three years, if the attachment continued during that interval, if the consent of the Church could then be obtained, and if ROGER TICHBORNE'S father agreed to the union of the cousins. ROGER TICHBORNE rejoined his regiment in Ireland, and about this time wrote those tender and touching effusions which have been read, and which no man that had written them could ever by any human possibility have forgotten to the last hour of his existence. On the 22nd of June, 1852, he saw his cousin for the last time, and he gave her an almost verbatim copy of the paper which he had previously placed in Mr. GOSFORD'S hands. In substance it was, "I promise if I marry my cousin KATE DOUGHTY this year, or within three years, to build a church or chapel at Tichborne to the Holy Virgin, in thankful acknowledgment of her protection, which she has shown in praying to GOD that our wishes might be fulfilled." Lady RADCLIFFE endorsed the paper, "This was written on the last day I ever saw ROGER." Mr. GOSFORD kept the Sealed Packed till the will of ROGER TICHBORNE, under which he was an executor, was proved, and you are aware that could only be done upon the supposition of the testator's death. After this, and after consultation with his wife, he destroyed the Sealed Packet. When, therefore, the Defendant put forward his claim no one could possibly have known of that Packet except three persons—Mr. and Mrs. GOSFORD, and ROGER TICHBORNE, if he were living. When, therefore, the meeting took place at the 'Grosvenor,' in 1867, Mr. GOSFORD said, "Now, look here, if you are ROGER TICHBORNE you can tell me what is the nature of that paper which you left with me when you went abroad." Mr. BULPETT, who was present, was struck with the straightforwardness of the question, and urged the Defendant to answer it, but he would merely say he did not remember. On the 1st of August, however, Mr. GOSFORD was cross-examined at the Law Institution, and the advisers of the Defendant extracted from him the fact that the document had been destroyed. You will see the importance of this fact; for if the document were in existence it would have been a most dangerous thing for the Defendant to pretend to say what was in it; whereas if it was destroyed, or lost, he might boldly state what he pleased, put his oath against those of Mr. and Mrs. GOSFORD, and take the chance of a Jury believing him. At this time I should have told you that the existence of Lady RADCLIFFE'S copy was not known even to Mr. GOSFORD. On the 6th of June the Defendant when challenged to state what was in the Sealed Packet said he did not know; but on the 2nd of August, the very day after Mr. GOSFORD'S examination, he penned his first account of its contents, and Mr. BULPETT put his initials to it in Mr. HOLMES'S office. Why did BULPETT, and why did HOLMES, abstain from asking GOSFORD one single question as to that document? Why did they conceal that document during 1868, '69, and '70, and never produce it till 1871, when the Trial was going on? I complain, and bitterly complain, that he kept that document so secret from Mr. GOSFORD all that time. But with the knowledge of the Sealed Packet being destroyed, the Defendant became bold, and made an affidavit in the Court of Chancery, stating that he had placed in GOSFORD'S hands a Packet not to be opened except in two certain events. In the course of his cross-examination as to what that statement meant, the Defendant committed the diabolical perjury that he had seduced ROGER TICHBORNE'S cousin in 1852, at the mill, either in the month of July or August. [Mr. HAWKINS then read the cross-examination of the Defendant on this point, in which he said that one of the events which he hoped would not happen was the confinement of Miss DOUGHTY and subsequently stating that he had seduced her]. The Defendant's Counsel says you must not treat his Client as an ordinary man, and not hold him responsible for dates. I want to know why you are not to treat him as an ordinary man. What have you seen in the inquiry to make you treat him otherwise? You will hold him to his dates. There cannot be an error about them. At the time he fixes it he was, by his own account, paying a visit to Tichborne, and he says it was ten days before the match was broken off by Sir EDWARD DOUGHTY. He fixes the time for it (which was beyond all question a wrong date) by saying that at the time he was paying his addresses to Miss HALES at Canterbury. Now, we know the engagement was broken off in the month of February preceding, and the last visit he paid to Tichborne was for two or three days in June. Fortunately and providentially I have the means of establishing the falsehood of his atrocious statement. Now, independently of Lady RADCLIFFE'S denial of these foul inventions, she also denies that at any time or place she and ROGER TICHBORNE were ever alone together outside the park and grounds. This is sworn by seven Witnesses—Lady RADCLIFFE, Lady DOUGHTY on her death-bed, Mrs. NANGLE, Miss NANGLE, Mr. and Mrs. GOSFORD, and BRAND the gamekeeper. These Witnesses say that after the 22nd of June ROGER TICHBORNE never crossed the threshold of the house, and they are to some extent corroborated by Mrs. GREENWOOD, and by almost every letter written by ROGER TICHBORNE after that period. The Defendant's Counsel says his Client is in error, and says that he won't be bound by dates. Bold language. He must be bound by dates, and, as other men are, by what they swear; and he asks you to convict Lady RADCLIFFE of a licentious intercourse with ROGER TICHBORNE at some indefinite place and time, on such testimony as I am about to call your attention to. He asks you to disbelieve GOSFORD, and in order that you may do so he makes a suggestion that GOSFORD has been guilty of an offence of which he was perfectly innocent, and calls him "the villain of the piece." If I had to give the names of the villains of the piece I should not include GOSFORD. I should include among them the man, whoever it was, who suggested to the Defendant's Counsel, in disregard of truth and decency, to question Lady RADCLIFFE as to whether, when she went down with her mother to Ryde, she did not receive prescriptions from Dr. LIPSCOMBE, the family doctor. It was all very well for him a few days afterwards, when he saw the shock and the horror with which it had been received, to say he meant nothing by it. You heard the question put, and the tone, and the manner; can you conceive there was any other object than to make a horrible suggestion? I should like to have had the opportunity of examining those who could have told us whence came those instructions from Dr. LIPSCOMBE'S books, and what prying eyes examined Dr. LIPSCOMBE'S ledger; and I should like to ask Dr. LIPSCOMBE, the man to whom the family secrets are confided, how he came to permit his ledger to be searched for such a purpose. Talk of the villain of the piece. I should like to ask you what you think of the man who, with an indelicacy so gross as to be scarcely credible, instructed the Defendant's Counsel to put a question to a French priest which pried into the secrets even of the confessional. They hoped Père LEFEVRE would have refused to answer it. They hoped his religious scruples would have bound him to say he could not answer, and from his refusal they intended you to infer that this foul charge against an innocent lady was not without foundation, regardless of the ruin that must have fallen upon Lady RADCLIFFE'S home. Père LEFEVRE said, "It is an infamy. If he had said it to me in confession I could not have told it, but he never said it." Truer words were never spoken by man. It was an infamy to ask it, with the object with which the words were put. There is an attempt made to discredit Lady RADCLIFFE by calling witnesses to say they have seen her with ROGER TICHBORNE beyond the garden gate, but there is not any one who has suggested one single act of impropriety of familiarity between them. [The learned Counsel then briefly reviewed the evidence of BOGLE and Mrs. BURT, and resumed.] What do you think of the manly, gallant Mr. GUILDFORD ONSLOW, who as early as 1867 had no less than £600 on his being the man? If you want further particulars of Mr. GUILDFORD ONSLOW'S dirty interest in this case, look to page 1,177 of the Defendant's cross-examination, where you will find a great deal of the Defendant's schedule in the Court of Bankruptcy, and you will find Mr. GUILDFORD ONSLOW in his own name a creditor for £3,000, for which the Defendant swore £1,000 had been advanced him. You will find that Mr. GUILDFORD ONSLOW'S agent at Ropley is a creditor for £3,000 for another £1,000 alleged to be advanced. This shows the interest he had in supporting this man's claim, and maintaining it, by any means fair or foul. We see now the "disinterested" motives, and we see why he has been lending since 1867 his powerful aid and assistance. We see now why he did not deem it derogatory to the character of an English

gentleman to produce a false and artful representation of the grotto. He intended that you should look at it as though it were surrounded by an impenetrable barrier of trees, through which nothing that went on inside could be seen. He endeavoured to produce a false impression on your minds. I charge against Mr. GUILDFORD ONSLOW that he gave those instructions to have it thus photographed deliberately for that purpose, and I say shame upon him, and henceforth let his name be associated with "the grotto." Let him have these two photographs—he has bought them—and have them framed, and let him hang them up on the walls of his ancestral home, and let them be for heirlooms in his family. Let there be a new order of knighthood established, and let Mr. GUILDFORD ONSLOW be dubbed "the Knight of the Grotto." I think it is the 1st of August, but I am not sure, that the little boys run about the streets with their little oyster-shells. Don't let them forget Mr. GUILDFORD ONSLOW, and let there be a sly significance in their appeal when they hold out the shell to say, "Please remember the grotto." (Laughter.) It is very well to laugh, but it is a shocking thing that a man of standing so high among his fellows should lend himself to such a dirty expedient. [After a few words of comment upon the evidence of ANN MINES, CHARLES LEWIS, and CHARLES GUY, Mr. HAWKINS went on]—And yet upon such testimony as this you are boldly and audaciously asked by the Defendant's Counsel to discredit a virtuous woman's oath, to stain her maiden name with the taint of impurity, and, stamping her with perjury, to say that she has been soiled and polluted by his Client's filthy, unholy, unnatural touch. I have no fear of you. In your hands her honour will be safe. You will guard it as carefully and as vigilantly as you will guard your own. (Slight applause, which was immediately checked.) Mr. HAWKINS continued—Gentlemen, my allotted task is now performed. It has been a long, an anxious, an arduous one. I have endeavoured to unravel and disentangle a mesh of audacious fraud which knows no parallel in our judicial annals. I have striven to show that no cunning fraud, however craftily devised, can stand before the clear beams of the heavenly light of truth. Those great issues which I have submitted to you are, I contend, overwhelmingly established by the evidence now before you. In the course of this long inquiry I have many times been more pained than I can find language to express. I have seen the great privileges of our order abused, and men and women, whose sole bounden duty it was by their testimony to aid in the administration of justice, branded by the Defendant's Counsel, without a shadow of foundation, as the most corrupt of perjurers. I have seen, by him, Justice insulted in her seat, and my lords on the bench, whom, from my youth upwards, I have ever been taught to revere and respect, wantonly assailed in the discharge of their solemn duty in tones and language which have almost made me blush for the order to which I have the honour to belong. Until this Trial I have thought that there were some limits to patience and endurance; but, under the most unprovoked assaults, I have seen my lords still dignified and forbearing, as if patience knew no limit, or endurance no bounds. It would ill become me to say one word more of them. * I must turn to my learned friends and all those who have been associated with me in this great Case, to express to them my unnumbered thanks for the zealous, cheerful, and invaluable aid they one and all have rendered me, the remembrance of which will last to my latest hour. To you (the Jury) may I also be permitted to offer my gratitude for the unexampled patience and forbearance which have so assisted me in the discharge of my duties. The time has arrived when my tongue has ceased to speak, and he whose duty it is impartially to hold the scales of justice will render you his unprejudiced aid in your deliberations, and you will then be called upon to fulfil your sacred mission. I can but pray GOD to guide you to the truth, and if you believe that that stupendous fraud, those monstrous acts now charged against the Defendant, have been established by the evidence—mindful of the sanctity of the oath you have taken—you will fearlessly pronounce that verdict which Justice demands. I have done my duty to the best of my ability, honestly, fearlessly, and conscientiously, and in like manner I am well sure you will discharge yours.

The learned Counsel resumed his seat amid a burst of applause from the public in court, which was immediately suppressed, the Lord Chief Justice remarking that there was nothing so offensive to the administration of Justice as such demonstrations in a Court of Law.

A great number of Queen's Counsel and barristers were present, many of whom came forward at the close of the speech to shake hands with and congratulate Mr. HAWKINS.

The Court adjourned at a quarter to four.

There was a considerable crowd outside despite the rain. The police arrangements were, as usual, very complete.

* That there should have been bitter altercations between Bench and Bar is a source of deep regret; but when the Lord Chief Justice justifies his heavy censure on Dr. KENEALY by the plea of "duty," we submit, in all fairness, that it was "duty"—a stern sense of duty alone—which prompted Dr. KENEALY to take the course he did. Had Dr. KENEALY been allowed to proceed uninterruptedly with his elaborate opening speech, much valuable time would have been saved and "scenes" avoided. But what was the course pursued? Judges and Jurymen kept up a running fire of commentary, correction, and denial—instead of leaving this in the usual way to Mr. HAWKINS. The leading Counsel for the Treasury had thus the greater and the more difficult part of his task performed for him by the very parties who were sitting impartially in the Case as Judges! So effectually was Mr. HAWKINS's work accomplished for him, that all he had to do, and all he did do, was to sketch the theory of the Prosecution in a continuous panoramic narrative.

THE PROBABILITY OF A DISAGREEMENT OF THE JURY IN THE TICHBORNE CASE.

The following appeared in one of the Daily Papers, on this day:—

"Now that the monster suit at Westminster is nearing its close, there is increasing interest and speculation as to the result. There is a very prevalent belief that there will be no verdict. This belief is founded on the attitude assumed by one of the Jurymen. Perhaps the assumption is unfounded, but it is noted that while his colleagues are fully alive to every point which Mr. HAWKINS makes, this particular Juror seems to be quite impassive. Rumour says that he is convinced the Claimant is TICHBORNE by the evidence with respect to his boots. Thus it is by no means impossible that this Trial will have to be gone through again. In that case it is to be hoped that the newspapers will agree to keep down their reports to a column a day, though the London Journals are scarcely likely to do that, seeing what a good thing they have made of this Trial. There is another rumour to the effect that after the Trial some sensational disclosures will be made of a kind which it would not be wise to describe; but it is understood that the Prosecution is fully cognisant of them. I hear that only the Lord Chief Justice will sum up. Mr. HAWKINS's speech was written out beforehand, and he is reading it from day to day. Considerable comment is made respecting the tremendous cost of this Trial, and it is asked whether it was necessary to retain not only Mr. HAWKINS and Serjeant PARRY, but also Mr. MATHEW and Mr. CHAPMAN BARBER. The fees of the Defendant's Counsel were, I understand, guaranteed by Lord RIVERS."

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Author Orton, Arthur, calling himself Sir Roger Charles Doughty-Tichborne, defendant
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